United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-1596

United States Court of Appeals

For the Second Circuit.

STUART D. WECHSLER, on behalf of himself and all others similarly situated,

Plaintiff-Appellant-Appellee,

against

SOUTHEASTERN PROPERTIES, INC.,

Defendant-Appellee-Appellant,

MONARCH FUNDING CORP., ANTHONY J. DEMATTEO, WILLIAM L. MANNING, JAMES HENRY, RONALD ULLENBERG, DAVID L. BOYD, H. T. BRADDOCK, GEORGE E. McGEE III and CHALMERS K. SMITH, and HENRY McCORD, FORRESTER & RICHARDSON, EDITH COOPER, and SCHNEIDER & BARATTA,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

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THE REPORTER COMPANY, INC., New York, N. Y. 10007—212/732-8076—1974

(3970)

UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

STUART D. WECHSLER, on behalf of himself and all others similarly situated,

Plaintiff-Appellant-Appellee,

against

SOUTHEASTERN PROPERTIES, Inc.,

Defendant-Appellee-Appellant,

MONARCH FUNDING CORP., ANTHONY J. DEMATTEO, WILLIAM L. MANNING, JAMES HENRY, RONALD ULLENBERG, DAVID L. BOYD, H. T. BRADDOCK, GEORGE E. MCGEE, III and CHALMERS K. SMITH and HENRY, MCCORD, FORRESTER & RICHARDSON, EDITH COOPER and SCHNEIDER & BARATTA,

Defendants.

- -X

DOCKET ENTRIES.

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D. C. 110 Rev. Civil Docket Continuation JUDGE KNAPP 72 Civil 1813

DATE	PROCEEDINGS	Date Judge
Jul 7-72	Filed ANSWER of defts. Schneider & Baratta to amended complaint.	
Jul 6-72	Filed Answer to Request to Produce. of deft. William L.Manning.	
Jul 6-72	Filed Answer to Request to Produce of Anthony J. DeMatteo.	
Jul 6-72	Filed Answer to Request to Produce of Southeastern Properties, Inc.	
Jul 12-72	Filed Interrogatories to Pltf. Stuart D. Wechsler.	
Jul 21-72	Filed ANSWER of Southeastern Properties, Inc. Anthony J.DeMatteo, William L.Manning, Ronald Ullenberg, etc. to Amended Complaint.	
Jul 21-72	Filed Answer of Southeastern Properties, Inc., etc. to cross-claim of Monarch Funding Corp.	
Jul 24-72	Filed ANSWER of defts. James Henry and Henry,McCord,Forrester & Richardson to AMENDED COMPLAINT.	
Jul 24-72	Filed ANSWER of James Henry and Henry,McCord,Forrester & Richardson to cross-claim of deft.Monarch Funding Corp.	
Jul 27-72	Filed Answer to cross claim of defts. Southeastern Properties,Inc.Anthony J. De Matteo, Wm.L.Manning, Ronald Ullenberg, David L.Boyd,H.T.Braddock, George E.McGee III and Chalmers K. Smith.	
Jul 27-72	Filed Answer to cross-claim of defts.James Henry and Henry McCord,Forrester & Richardson.	
Jul 28-72	Filed MEMO.END. on motion papers filed 6/21/72. Defendant's motion for a protective order relating to the place for taking depositions of defendants is granted to the extent indicated; If the parties are unable to reach agreement as to a reasonable order and schedule, the Court reserves jurisdiction to establish such a schedule on application for additional relief by not less than five days notice, made at the foot of this order. So ordered. Bricant, J.	
Jul 31-72	Filed Answer of defts. Southeastern Properties,Inc., Anthony J. DeMatteo,Wm.L. Manning, Ronald Ullenberg, etc. to cross-claim of James Henry and Henry McCord, Forrester and Richardson.	
Jul 31-72	Filed Answer to cross-claim of defendants Schneider & Baratta.	
Aug.2-72	Filed Answer of Monarch Funding Corp.to cross-claim of defts.James Henry and Henry,McCord,Forrester & Richardson.	
Aug.2-72	Filed Answer to cross-claim of defts. Southeastern Properties,Inc.,Anthony J.DeMatteo, William L.Manning, Ronald Ullenberg, David L.Boyd,H.T.Braddock,George E.McGee and Chalmers K. Smith.	
Aug.8-72	Filed Notice of Motion re: Class Action. Ret. 8/22/72. (by pltf.)	
Aug 10 72	Filed cross-notice to take deposition upon oral examination and request to produce of defts:Southeastern Properties,Inc.,Monarch Funding Corp., Anthony J. DeMatteo, Wm.L.Manning,Ronald Ullenberg, David L. Boyd, H.T. Braddock,George E. McGee,III and Chalmers K. Smith,Edith Cooper and Schneider & Baratta pursuant to R.26 et. seq. of F.R.C.P.	
Aug 22-72	Filed stipulation that pltff's motion to declare action a class action is adj. from 8-22 9-5-72	
Aug.15-72	Filed Answers to Interrogatories.	
Aug.25-72	Filed Summons with marshal's ret. Served: Southeastern Properties, Inc. by Anthony J. De Matteo on 5/8/72 Anthony J. De Matteo on 5/8/72 William L.Manning by Anthony J. De Matteo on 5/8/72. James Henry by Anthony J. De Matteo on 5/8/72. Ronald Ullenberg by Anthony J. De Matteo on 5/8/72 Henry McCord Forrester & Richardson by Lillian Jernigan on 5/9/72 Edith Cooper on 6/14/72.	
Sep.5-72	Filed stip. that pltff's motion to declare the action a class action be adjourned from 9-5-72 to 10-3-72.	
Oct.12-72	Filed defts Answers to interrogatories.	

Continued on page 4

DOCKET ENTRIES

JUDGE KNAPP Wechsler,etal vs. Southeastern Properties JUDGE

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DATE	PROCEEDINGS
Nov.27-72	Filed Order Pltff moves for an order declaring that this action be maintained as a class action pursuant to F.R.C.P. Rule 23(c)(1) The matter is therefore set down for a further hearing on 12-12-72 at 4:00 P.M. in room 36 for resolving the question whether this should be a determined a class action.(For further details see order in file) So Ordered 11-21-72(mailed notices) KNAPP, J.
May 30-73	Filed pltff's interrogatories to deft. Southeastern Properties, Inc. Second Set.1
Jun.28,73	Filed notice of motion ret. July 10,73, Room 618 at 9 a.m. Re: order compelling defts. Southeastern Properties to answer interrogatories.
Jul.3,73	Filed affdvt in opposition to pltf motion to compel.
Jul.26-73	Filed deft's James Henry & Henry McCord Forrester & Richardson,affvd, & notice of motion Re: summary judgment ret.7-31-73.
Jul.26-73	Filed deft's memorandum of points & authorities in support of motion ret.7-31-73.
Jul.27-73	Filed answering affidavit of E. Labaton in opposition to Southeastern, motion to dismiss complaint.
Jul.27-73	Filed pltff's memorandum in opposition to deft's motion for summary, judgment.
Jul.30-73	Filed Stip & order that pltff's motion is adj. to 7-31-73. So ordered. Knapp,J.
Oct.5-73	Filed deft's (J.Henry & H.McCord Forrester & Richardson memorandum of points & authorities.
Oct.5-73	Filed deft(Monarch funding Corp's) supplemental affidavit.
Apr.5-74	Filed OPINION #40558: Motions to dismiss by the various deft's & applications for counsel fees & costs by pltff's atty & by deft. Southeastern Properties, are pending. The case is dismissed & counsel fees & costs are denied as to all parties. m/n Knapp,J.
Apr.26 74	Filed pltff's notice of appeal to the USCA from order entered 4-5-74, dismissing action. Mailed copies to Schwartz,Mermelstein,Kane,Kessler, Hart & Hume & Howard J.Goldstein.
Apr.26-74	Filed Bond undertaking for costs on appeal in the sum of $250.00 by, National Surety Corp.
May.3-74	Filed deft's Southern Properties notice of cross-Appeal from order, entered. 4-5-74 denieding said deft's motion awarding costs. Mailed copies to Shatzkin & Cooper,Kane,Kessler,Preiss,Rand & Proujansky, Hart & Hume, & Howard J. Goldstein.
May 14,74	Filed Notice of Motionfor summary judgment.
May 14,74	Filed Notice of Cross Motion denying pltff's motion for a class action.
May14,74	Filed Supplal Memo of Law in support of Defts.
May14,74	Filed Deft. Southeasten Properties, Inc. objection to Pltff's Interrogs.
May 14,74	Filed Reply Affidavit of A. I. Burns, dated 7-30-73
May14,74	Filed Memo of Law in support of Defts motion to dismiss.
May14,74	Filed Supple. Memo in opposition to deft's motion to dismiss.
May14,74	Filed Transcript ofproceedings dated July 31, 1973
May 14,74	Filed Supple. Reply Memo in support pltff's motion to declare the action class
May14,74	Filed Reply memo in support of motion for class action.
May14,74	Filed Affidavit of A. I . Burns dated Oct 10-72
May 14,74	Filed Reply Afft. of E. Labaton dated Oct 12, 72.
May 14,74	Filed Sur-Reply Afft. of C. G. Bartholomaus dated Nov 8, 72.
May 14,74	Filed afft. of C. G. Bartholomaus dated Nov 2, 72.
May 14, 74	Filed Defts Memo of Law in opposition to Pltff's class action motion.
May 14, 74	Filed afft. of A. J. DeMattero datedOct 18,72

DOCKET ENTRIES

ART D. WECHSLER, ON BEHALF ETC, VS. SOUTHEASTERN PROPERTIES, INC. ET AL

W. KNAPP

& 72 Civ 181

DATE	PROCEEDINGS
May14,74	Filed Memo in support of pltff's motion Pursuant to Rule 23.
May 14,74	Filed Memo of Law in opposition to motion for class action.
May14,74	Filed Affidavit in opposition by Lester Saterman dated 9-29-72
May 24,74	Filed Affidavit of H. J. Goldstein dated Oct 9,72
May14,74	Filed Deft. Monarch Funding Corp. s afft. in opposition dated 10-2-
May 14,74	Filed Reply afft. in support of motion for a portective order.dated-
**Jul 10,72	Filed Pltff's Memo of Law in opposition to motion pur. to Ruled 26(c) of the F.R.C.P.
**July 10-72	Filed Afft. in opposition by Edward Labaton dated 7-7-72.
**Jul 28,72	Filed Afft. in opposition by Leo Eisenberg dtd. 6-27-72

D. C. 109 Criminal Continuation Sheet

AMENDED COMPLAINT - CLASS ACTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- -X

STUART D. WECHSLER, on behalf of himself and all others similarly situated,

Plaintiff,

against

SOUTHEASTERN PROPERTIES, Inc., MONARCH FUNDING CORP., ANTHONY J. DEMATTEO, WILLIAM L. MANNING, JAMES HENRY, RONALD ULLENBERG, DAVID L. BOYD, H. T. BRADDOCK, GEORGE E. MCGEE, III and CHALMERS K. SMITH and HENRY MCCORD, FORRESTER & RICHARDSON, EDITH COOPER and SCHNEIDER & BARATTA,

Defendants.

- -X

Plaintiff by his attorneys, Shatzkin & Cooper, complaining of the defendants on behalf of himself and all other purchasers of Southeastern Properties, Inc. ("Southeastern") common stock, similarly situated, alleges upon information and belief, except as to Paragraph 4, which plaintiff alleges upon knowledge.

AMENDED COMPLAINT - CLASS ACTION

Jurisdiction.

1. This action arises under Sections 11, 12(2) and 17(a) of the Securities Act of 1933, as amended ("Securities Act"), Sections 10(b) and 27 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), the rules and regulations of the Securities and Exchange Commission promulgated thereunder, Sections 352-c and 352-e of the New York General Business Law and common law principles.

2. Jurisdiction of this action rests on Section 22(2) of the Securities Act and Section 27 of the Exchange Act and on the principles of pendent jurisdiction.

Class Action Allegations.

3. Plaintiff brings this action on behalf of himself and all other persons, exclusive of defendants, who purchased any of the 200,000 shares of common stock of Southeastern sold in a public underwritten offering (hereinafter "Public Offering"). pursuant to Southeastern's Prospectus dated January 31, 1972, whether such persons purchased their shares of stock directly from the underwriters of the Public Offering or in the open

market thereafter, and who have either retained their stock or sold their stock at a loss. All such persons are collectively referred to herein as the "class".

4. Plaintiff purchased 400 shares of Southeastern common stock on or about March 13, 1972, at $5.00 per share, pursuant to the Public Offering, and still retains 300 of such shares.

5. The number of members of the class is in excess of five hundred.

6. Questions of law and fact are presented herein which are common to the class, including the question of whether the registration statement and prospectus pursuant to which Southeastern stock was sold, was false or misleading.

7. Plaintiff will fairly and adequately protect the members of the class since his interest and the interests of the class are identical and he has no interest adverse to the interests of the class.

8. Upon information and belief, no member of the class to date has expressed any interest in individually controlling the prosecution of separate actions.

9. The principal offices of many of the defendants are located in the Southern District of New York. The

plaintiff's residence is in New York City and a substantial number of the members of the class are residents of the New York Metropolitan area indicating the desirability of concentrating the litigation of their claims in this Court.

10. There are no unusual difficulties likely to be encountered in the management of this class action.

Defendants.

11. Defendant Southeastern Properties, a Delaware corporation, issued and sold 200,000 shares of its common stock at $5.00 per share in the Public Offering.

12. Defendant Monarch Funding Corp. is a broker-dealer and acted as underwriter of the Public Offering.

13. The following defendants held offices in Southeastern as indicated:

Name	Office
Anthony J. DeMatteo	President, Assistant Treasurer and Chairman of the Board
William L. Manning	Vice President, Assistant Secretary and Director
James Henry	Secretary
Ronald Ullenberg	Treasurer and Director
David L. Boyd	Director

Name	Office
H. T. Braddock	Director
George E. McGee, III	Director
Chalmers K. Smith	Director

14. Defendant Henry, McCord, Forrester & Richardson is general counsel to the company, aided in the preparation of the prospectus and registration statement and their name is listed under the caption "Legal Opinions" on page 20 of the prospectus.

15. Defendant Edith Cooper was the attorney for defendant Monarch, aided in the preparation of the prospectus and registration statement and is listed as attorney for the underwriter under the caption "Legal Opinions" on page 20 of the prospectus.

16. Defendant Schneider & Baratta was special counsel to Southeastern in connection with the Public Offering and aided in the preparation of the prospectus and registration statement. Their name is listed on page 20 of the prospectus under the caption "Legal Opinions" as special counsel to the company.

17. Each of the defendants aided and abetted the violations of the Securities Act, the Exchange Act, the

General Business Law of the State of New York and was responsible for the damages caused by the common law claims alleged herein.

18. In order to sell the 200,000 shares of common stock of Southeastern offered pursuant to the prospectus, Southeastern was required to make appropriate filings with the Attorneys General of the States of New York and New Jersey. Such filings were not made. As a consequence, soon after the Public Offering and in March 1972, the Attorney General of the State of New York commenced an investigation of the Public Offering and caused trading of the common stock of Southeastern to be halted in New York State.

19. The registration statement and prospectus of Southeastern did not disclose that certain filings were required with the Attorneys General of the States of New York and of New Jersey, did not disclose that such filings had not been made, and did not state that as a result of defendants' failure to make such filings the securities sold to plaintiff and to the class he represents are not freely tradable.

20. The registration statement and prospectus failed to disclose that Southeastern, prior to the effective date

of the prospectus and registration statement, had commenced negotiations with Apollo Industries, Inc. regarding an acquisition by Apollo of Southeastern.

21. (a) The registration statement and prospectus stated that the properties of Southeastern (which were its principal asset) were reflected in Southeastern's financial statements at the cost of $1,719,551.

(b) The balance sheet of Southeastern as shown in the prospectus carried as assets real properties at $1,630,868 as of September 30, 1971.

(c) The prospectus and registration statement stated that on the basis of the property valuation of $1,719,551, 218,044 shares of Southeastern's stock issued to International Land Locators, Inc. ("International") for the properties less mortgage and note obligations were valued at $1,069,087 (or approximately $4.90 per share).

22. The statements described in ¶21 hereof were materially false and misleading in that:

(a) The properties owned by Southeastern were acquired by International in exchange for the assumption of $403,000 in existing mortgages and the issuance of International's corporate note having a principal face

amount of approximately $1,328,000 payable over a period of ten (10) years with interest at 4% per annum.

(b) International's 4% corporate note had a value substantially less than its principal face amount.

(c) By virtue of the fact that the note issued for the properties had a true value substantially less than its principal face amount, the assets reflected on Southeastern's balance sheet were artificially inflated.

(d) The valuation of shares of stock issued to International in exchange for properties was artificially inflated by virtue of the artificial inflation of the valuation of the properties on Southeastern's balance sheet.

23. The Public Offering was accomplished by the use of means or instruments of transportation or communication in interstate commerce or of the mails by means of a prospectus and registration statement which contained untrue statements of material facts or omitted to state material facts required to be stated therein or necessary to make statements therein in the light of the circumstances under which they were made not misleading, constituting a fraud and deceit upon the purchasers of Southeastern's common stock.

24. The false and misleading statements contained in Southeastern's registration statement and prospectus and the material omissions therefrom were made by defendants singly and in concert, were known and intentional and were made with reckless disregard of defendants' duty to plaintiff and the class.

25. Neither the plaintiff nor members of the class discovered or by the exercise of reasonable diligence could have discovered the facts and matters complained of herein.

Wherefore, plaintiff demands judgment with interest against all of the defendants on behalf of himself and all members of the class in the total amount of the claims proved and established by all members of the class, including rescission, if appropriate, together with interest and costs including reasonable attorneys' and accountants' fees, and for such other and further relief as may be just and proper.

SHATZKIN AND COOPER
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ANSWER OF DEFENDANTS, SOUTHEASTERN PROPERTIES, INC., ANTHONY J. DeMATTEO, WILLIAM L. MANNING, RONALD ULLENBERG, DAVID L. BOYD, H. T. BRADDOCK, GEORGE E. McGEE, III AND CHALMERS K. SMITH TO AMENDED COMPLAINT.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- - - - - -

SAME TITLE

- - - - - -

Defendants, Southeastern Properties, Inc., Anthony J. DeMatteo, William L. Manning, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III and Chalmers K. Smith, by their attorneys, Schwartz, Mermelstein, Burns, Lesser & Jacoby, answering the complaint herein, allege:

1. Deny each and every allegation contained in paragraphs "1", "2", "17", "22" and "24" of the complaint.

2. Deny knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraphs "3", "4", "5", "6", "7", "8", "10" and "25" of the complaint.

3. Deny knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph "9" of the complaint, except allege that answering defendants maintain their principal offices for the conduct of business in and about Chattanooga, Tennessee.

4. Admit the allegations contained in paragraphs "11", "12" and "13".

5. Deny knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraphs "14", "15" and "16", except admit that as of the date of the prospectus, Henry McCord, Forrester & Richardson was general counsel to Southeastern Properties, Inc. ("Southeastern") and was listed as such on page 20 of the prospectus; that Edith Cooper is listed as attorney for the underwriter on page 20 of the prospectus; and that as of the date of the prospectus, Schneider & Baratta was special counsel to Southeastern, was listed as such on page 20 of the prospectus and passed on legal matters for the company in connection with the offering.

6. Deny each and every allegation contained in paragraph "18", except admit that in or about the month of March, 1972, the Attorney General of the State of New York commenced an investigation of the public offering of Southeastern stock and, that upon information and belief, such stock is not currently being traded in New York.

7. Admit that a Registration Statement and Prospectus was filed in connection with the public offering of Southeastern stock, to which reference is made for the contents thereof. Any further allegations contained in paragraphs "19", "20" and "21" as to the contents of these documents, defendants hereby deny. Defendants also deny those parts of paragraphs "19" and "20" which refer to New York and New Jersey Blue Sky filings and negotiations with Apollo Industries, Inc.

8. Deny each and every allegation contained in paragraph "23", except admit that the means or instruments of transportation or communication in interstate commerce were used in connection with the public offering.

AS AND FOR A FIRST FURTHER ANSWER AND DEFENSE TO THE COMPLAINT, DEFENDANTS ALLEGE:

9. That the complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND FURTHER ANSWER AND DEFENSE TO THE COMPLAINT, DEFENDANTS ALLEGE:

10. That the complaint fails to state a claim under the Securities Act of 1933 or the Securities Exchange Act

of 1934 and that, absent a claim for damages to the named party plaintiff in excess of $10,000, this Court lacks jurisdiction over the subject matter.

AS AND FOR A THIRD FURTHER ANSWER AND DEFENSE TO THE COMPLAINT, DEFENDANTS ALLEGE:

11. That before the commencement of this action, trading in the Common Stock of Southeastern had stopped in the State of New York but continued in markets other than in the State of New York. That the plaintiff was afforded the opportunity to mitigate his damages by selling his securities in the available markets, but did not avail himself thereof.

12. That by reason of the foregoing, the institution and maintenance of this action as a class action is an abuse and an undue burden on the Court and this Court should not permit this matter to proceed as a class action.

AS AND FOR A CAUSE OF ACTION FOR INDEMNITY AGAINST DEFENDANTS, MONARCH FUNDING CORP. AND EDITH COOPER, DEFENDANTS ALLEGE:

13. Under the terms of the underwriting agreement for the issue of the stock involved herein, defendant Monarch Funding Corp. ("Monarch"), the underwriter, was

responsible for the Blue Sky filing in the State of New York, which filings were required before permission could be obtained to sell the securities of Southeastern in New York State.

14. Upon information and belief, defendant Edith Cooper acted as attorney for Monarch and, as such, she prepared certain documents which were filed with the Secretary of State of the State of New York.

15. Upon information and belief, if any of the Blue Sky filings were defective or incomplete so as to cause the Attorney General of the State of New York to take action with regard to this offering, any suspension of trading was caused by the negligence of Monarch's attorney, Edith Cooper, and Monarch's own failure to comply with its responsibilities under the underwriting agreement.

16. Pursuant to Article VII(D) of the Underwriting Agreement, Monarch agreed to indemnify and hold harmless Southeastern and its officers and directors against any and all claims, demands, liabilities and expenses (including reasonable attorneys' fees) to be incurred in the defense of such claims to the extent that such claims

and expenses shall arise out of and be based upon any untrue statement or alleged untrue statement contained in any Blue Sky application.

17. If Southeastern or any of its officers or directors are found to be liable to plaintiff or to any member of the class for damages resulting from an improper Blue Sky filing or untrue statement or material omission of a required or necessary statement, this defendant is entitled to indemnity over in like amount from the defendants Monarch and Edith Cooper and, in addition, entitled to reimbursement for all attorneys' fees, legal expenses and costs incurred by this defendant in this action and other consequential damages resulting from the matters set forth herein and in the complaint.

18. That after the institution of this action and prior to the filing of this answer, Southeastern gave Monarch written notice of its claim for indemnity and said Monarch has failed and refused to acknowledge such liability and to come and defend these defendants.

ANSWER OF DEFENDANTS, SOUTHEASTERN PROPERTIES, INC., ANTHONY J. DeMATTEO, WILLIAM L. MANNING, RONALD ULLENBERG, DAVID L. BOYD, H. T. BRADDOCK, GEORGE E. McGEE, III AND CHALMERS K. SMITH TO AMENDED COMPLAINT

AS AND FOR A CAUSE OF ACTION FOR INDEMNITY AGAINST DEFENDANT SCHNEIDER & BARATTA, DEFENDANTS ALLEGE:

19. Defendant, Schneider & Baratta, acted as special counsel to defendant Southeastern for purposes of the public offering referred to in the complaint herein.

20. As special counsel, Schneider & Baratta were required to and did pass on legal matters in connection with such public offering, including the adequacy, completeness, accuracy and procedures for the filing of all documents required by the Securities and Exchange Commission, other branches of the Federal Government and those State Governments within whose jurisdictions the securities were offered for sale.

21. Upon information and belief, if any of the Blue Sky filings were defective or incomplete so as to cause the Attorney General of the State of New York to take action with regard to this offering, any suspension of trading resulted from the negligence of Schneider & Baratta in the performance of their responsibilities and duties to Southeastern.

22. If Southeastern or any of its officers or directors are found to be liable to plaintiff or to any member of the class for damages resulting from an improper Blue Sky filing or an untrue statement or material omission of a required or necessary statement, such defendants are entitled to indemnity over and in like amount from Schneider & Baratta in addition to any further damages, losses, costs, or expenses resulting from the matters set forth herein and in the complaint.

WHEREFORE, answering defendants respectfully pray:

1. That plaintiff recover nothing of answering defendants, and that plaintiff's action herein be dismissed;

2. That the costs of this action be taxed against the plaintiff;

3. That in the event plaintiff recovers judgment against these defendants, these defendants recover from co-defendants, Monarch Funding Corp., Edith Cooper and Schneider & Baratta judgment over and in like amount in addition to any further damages, losses, costs or expenses resulting from the matters set forth herein and in the complaint;

4. That defendant Southeastern be granted judgment against defendant Monarch Funding Corp. to reimburse it for attorneys' fees and defense costs herein; and

5. For such other and further relief as to the Court may seem just and proper.

SCHWARTZ, MERMELSTEIN, BURNS,
LESSER & JACOBY
By s/ EVERETT A. FROHLICH
Member of the Firm
Attorneys for Defendants Southeastern Properties, Inc., Anthony J. DeMatteo, William L. Manning, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III and Chalmers K. Smith
Office & P. O. Address
445 Park Avenue
New York, N. Y. 10022
(212) 980-3200

ANSWER OF DEFENDANTS JAMES HENRY AND HENRY, McCORD, FORRESTER & RICHARDSON TO AMENDED COMPLAINT.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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Defendants JAMES HENRY and HENRY, McCORD, FORRESTER & RICHARDSON, by their attorneys HART & HUME, answering the amended complaint herein, show and allege:

Jurisdiction.

1. Deny each and every allegation contained in paragraphs numbered "1" and "2" of the amended complaint.

Class Action Allegations.

2. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs numbered "3", "4", "5", "7", "8", "9" and "10" of the amended complaint.

3. Deny each and every allegation contained in paragraph "6" of the amended complaint.

ANSWER OF DEFENDANTS JAMES HENRY AND HENRY, McCORD, FORRESTER & RICHARDSON TO AMENDED COMPLAINT

Defendants.

4. Deny each and every allegation contained in paragraph "14" of the amended complaint except to admit defendants HENRY, McCORD, FORRESTER & RICHARDSON as general counsel to the company and respectfully refer this court to the Prospectus and Registration Statement for the contents thereof.

5. Deny each and every allegation contained in paragraph "21" of the amended complaint except admit that the Registration Statement and Prospectus contain certain information and respectfully refer this court to the Registration Statement and Prospectus for the contents thereof.

6. Deny each and every allegation contained in paragraphs numbered "17", "22", "23" and "24" of the amended complaint.

7. In response to paragraph "18" of the amended complaint, defendants admit that the Statutes of New York call for certain filings and respectfully refer this court to such Statutes for the contents thereof, admit the Attorney General of New York commenced an investigation of the offering and temporarily halted trading of

Southeastern stock in New York State and, upon information and belief, deny that appropriate filings were not made.

8. Deny each and every allegation contained in paragraph "19" of the amended complaint and respectfully refer this court to the Registration Statement and Prospectus for the contents thereof, except to admit, upon information and belief, that for reasons beyond answering defendants' control, the securities sold to plaintiff may not be freely tradeable at present in New York State.

9. Deny each and every allegation contained in paragraph "20" of the amended complaint in that, upon information and belief, said negotiations with Apollo Industries, Inc. were commenced after the effective date of the Prospectus and Registration Statement, and in any event, any failure to so state was not an omission of a material fact required to be stated therein or necessary to make the statements herein, in light of the circumstances under which they were made, not misleading.

10. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "25" of the amended complaint.

ANSWER OF DEFENDANTS JAMES HENRY AND HENRY, McCORD, FORRESTER & RICHARDSON TO AMENDED COMPLAINT

AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE

11. The amended complaint herein fails to state a claim against these answering defendants upon which relief can be granted.

AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE

12. That the answering defendants are not those against whom suit for misstatements or omissions in a Registration Statement or Prospectus is authorized by 15 U.S.C. (§77K and §11 of the Securities Act of 1933, as amended) and said defendants are not proper parties.

AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE

13. Without conceding that answering defendants are proper party defendants, said defendants allege:

a) that as regards any part of the Registration Statement not purporting to be made on the authority of an expert, and not purporting to be a copy of an extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, defendants had, after reasonable investigation, reasonable ground to believe and did

believe, at the time such part of the Registration Statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading;

b) that as regards any part of the Registration Statement purporting to be made upon their authority as an expert, and without conceding any part of said Statement to have been actually made upon their authority as an expert, they had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the Registration Statement became effective that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

c) that as regards any part of the Registration Statement purporting to be made on the authority of an expert (other than itself) or purporting to be a copy of an extract from a report or valuation of an expert (other than themselves), they had no reasonable ground to believe and did not believe, at the time such part of the Registration Statement became effective, that the

statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the Registration Statement did not fairly represent that statement of the expert or was not a fair copy of an extract from the report or valuation of the expert;

d) that as regards any part of the Registration Statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, they had no reasonable ground to believe and did not believe at the time such part of the Registration Statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the Registration Statement did not fairly represent the statement made by the official person or was not a fair copy or extract from the public official document.

ANSWER OF DEFENDANTS JAMES HENRY AND HENRY, McCORD, FORRESTER & RICHARDSON TO AMENDED COMPLAINT

AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE

14. That the statements set forth in the Registration Statement and Prospectus of which plaintiff complains were not material nor were they an inducing cause for the purchase of the stock of the company either by the plaintiff or by any other person, and defendants did not know, and in the exercise of reasonable care could not have known of any untruth or omission in said Statement and Prospectus.

AS AND FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE

15. Any damages claimed to have been suffered by plaintiff or by any other purchaser of the stock of Southeastern were due to factors or causes other than the alleged misstatements or omissions in the Registration Statement and Prospectus.

AS AND FOR A CROSS-CLAIM AGAINST DEFENDANT SCHNEIDER & BARATTA

16. The Registration Statement and Prospectus of which plaintiff complains were prepared on behalf of Southeastern by defendant SCHNEIDER & BARATTA, which defendant also undertook the responsibility of compliance

with applicable State law and regulation in the public offering of Southeastern's common stock, including the preparation and filing of Registration Statements required by such laws and regulations.

17. Cross-claiming defendants had reasonable grounds to rely on representations and to believe and did believe that such statements were true, accurate and complete and not misleading.

18. If any judgment is rendered against cross-claiming defendants herein it will be because such statements as filed and prepared were untrue, inaccurate, incomplete and misleading because of the negligence and lack of care of the defendants SCHNEIDER & BARATTA.

19. By reason of the foregoing should any judgment be rendered against these defendants, they would have judgment over in like amount against the aforementioned defendants SCHNEIDER & BARATTA.

AS AND FOR A CROSS-CLAIM AGAINST ALL THE DEFENDANTS

20. In the event defendants become liable to make any payment to the plaintiff defendants claim the right of contribution from each and every defendant who, if sued, separately, would be liable to make the same payment.

ANSWER OF DEFENDANTS JAMES HENRY AND HENRY, McCORD, FORRESTER & RICHARDSON TO AMENDED COMPLAINT

WHEREFORE, defendants JAMES HENRY and HENRY, McCORD, FORRESTER & RICHARDSON 1) demand judgment dismissing the amended complaint together with counsel fees and the costs and disbursements of this action; 2) or in the alternative, if plaintiff receives judgment from said defendants, said defendants demand judgment in like amount and counsel fees from defendant SCHNEIDER & BARATTA, and further judgment declaring that answering defendants have the right of contribution from all defendants.

Dated: New York, New York
July 20, 1972

HART & HUME
By WILLIAM HART
A Member of the Firm
Attorneys for Defendants JAMES HENRY and HENRY, McCORD, FORRESTER & RICHARDSON
Office & P. O. Address
10 East 40 Street
New York, New York 10016
Tel: (212) 686-0920

ANSWER OF DEFENDANTS SCHNEIDER & BARATTA TO AMENDED COMPLAINT.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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Defendants SCHNEIDER & BARATTA, by their attorney HOWARD J. GOLDSTEIN, answering the Amended Complaint herein allege as follows:

1. Deny each and every allegation in Paragraphs "1", "2", "3", "6", "7", "17", "18", "19", "22", "23", "24" and "25".

2. Deny knowledge or information sufficient to form a belief as to each and every allegation in Paragraphs "4", "5", "8", "9" and "10".

3. Deny each and every allegation in Paragraph "20" insofar as it indicates that any negotiations with Apollo Industries Inc. had commenced prior to the effective date of the Prospectus and Registration Statement.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

4. Complaint fails to state a cause of action upon which relief can be granted by this Court.

ANSWER OF DEFENDANTS SCHNEIDER & BARATTA TO AMENDED COMPLAINT

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

5. This Court does not have jurisdiction of the subject matter of this Complaint.

WHEREFORE, Defendants SCHNEIDER & BARATTA demand judgment against Plaintiff dismissing the Complaint together with costs and disbursements of this action and such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
July 6, 1972

s/ HOWARD J. GOLDSTEIN
Attorney for Defendants
SCHNEIDER & BARATTA
1250 Broadway
New York, New York 10001
736-8088

ANSWER OF DEFENDANT MONARCH FUNDING CORP. TO AMENDED COMPLAINT.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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The defendant, MONARCH FUNDING CORP. (hereinafter referred to as "MONARCH"), by its attorneys, Kane, Kessler, Preiss, Rand & Proujansky, P.C., answering the amended complaint herein, alleges and says:

1. Denies any knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "21" and "22" of the amended complaint.

2. In accordance with the stipulation dated June 29, 1972 between this defendant and the plaintiff, the allegations in the answer made with respect to paragraphs of the complaint numbered "21", "22" and "23" shall respectively be deemed to be an answer to the allegations contained in paragraphs "23", "24" and "25" of the amended complaint; and in all other respects the answer heretofore filed by this defendant shall be deemed to be an answer to the amended complaint.

ANSWER OF DEFENDANT MONARCH FUNDING CORP. TO AMENDED COMPLAINT

WHEREFORE, defendant, MONARCH FUNDING CORP. respectfully prays the Court:

1. That the plaintiff recover nothing of this defendant, and that the plaintiff's action be dismissed as to this defendant; and

2. That the costs of this action be taxed against the plaintiff; and

3. That in the event the plaintiff recovers judgment against this defendant, this defendant recover from its co-defendants judgment over in like amount plus attorneys' fees and defense costs together with punitive and exemplary damages in the sum of $200,000.00; and

4. That this defendant be granted a judgment against the defendant, SOUTHEASTERN PROPERTIES, INC. to reimburse it for attorneys' fees and defense costs herein; and

5. For such other and further relief as to the Court may seem just and proper.

KANE, KESSLER, PREISS, RAND
& PROUJANSKY, P.C.
By: EDMUND PREISS
Attorneys for the Defendant
Monarch Funding Corp.
Office & P. O. Address
60 Wall Street
New York, New York 10005
(212) HA5-1222

ANSWER OF DEFENDANT MONARCH FUNDING CORP. TO ORIGINAL COMPLAINT.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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The defendant, MONARCH FUNDING CORP. (hereinafter referred to as "MONARCH"), by its attorneys, Kane, Kessler, Preiss, Rand & Proujansky, P.C., answering the complaint herein, alleges and says:

1. Denies any knowledge or information thereof sufficient to form a belief as to the allegations contained in Paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 23 of the complaint.

2. On information and belief, denies the allegations in paragraph 2 of the complaint.

3. The allegations contained in paragraphs 17 and 22 are denied insofar as they are stated to be applicable to this defendant.

4. Denies any knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraph 18 of the complaint, except that this defendant admits that in or about March, 1972, the Attorney General of the State of New York commenced an investigation

of the public issue and that the trading of the Common Stock of the defendant, SOUTHEASTERN PROPERTIES, INC. (hereinafter referred to as "SOUTHEASTERN"), thereupon halted in the State of New York.

5. It is admitted that a Registration Statement and Prospectus was filed in connection with the public offering of Southeastern's Common Stock to which reference is made for the contents thereof, and that Edith Cooper was the Attorney who represented this defendant in its capacity as Underwriter in said public offering; and except as so admitted, denies the allegations contained in paragraphs 15, 19 and 20 of the complaint.

6. Denies any knowledge or information thereof sufficient to form a belief as to the allegation (if intended as an allegation of fact) in paragraph 20 that Southeastern had prior to the effective date of the Prospectus and Registration Statement commenced negotiations with Apollo Industries Inc. regarding an acquisition by Apollo Industries, Inc. of Southeastern.

ANSWER OF DEFENDANT MONARCH FUNDING CORP. TO ORIGINAL COMPLAINT

AS AND FOR A FIRST FURTHER ANSWER AND DEFENSE TO THE COMPLAINT, THIS DEFENDANT, MONARCH ALLEGES:

7. That the complaint fails to state a claim against this defendant upon which relief can be granted.

AS AND FOR A SECOND FURTHER ANSWER AND DEFENSE TO THE COMPLAINT, THIS DEFENDANT ALLEGES:

8. That if the Prospectus and Registration Statement contained untrue statements of material facts, or omitted to state material facts required to be stated therein or necessary to make statements therein in the light of the circumstances under which they were made not misleading, all of which is denied, the statements made were not supplied by this defendant for use therein nor were they inserted with the knowledge of this defendant that they were material and untrue; and as to any facts which may have been omitted, such omission was not at the direction of this defendant, nor did this defendant have knowledge of any material facts not contained in the Registration Statement or Prospectus or required to be stated therein or necessary to make the statements therein in the light of the circumstances under which they were made not misleading.

ANSWER OF DEFENDANT MONARCH FUNDING CORP. TO ORIGINAL COMPLAINT

9. That if the plaintiff or any members of the class for whom the plaintiff purports to be acting herein sustained any damages by reason of a fraud and deceit practiced upon them in the sale of Southeastern's Common Stock, which is denied, the damages were caused by the acts of one or more of the other defendants herein, other than the defendant, Monarch and by the acts, singly or in concert, of said other defendants.

AS AND FOR A THIRD FURTHER ANSWER AND DEFENSE TO THE COMPLAINT, THIS DEFENDANT ALLEGES:

10. That before the commencement of this action, trading in the Common Stock of Southeastern had stopped in the State of New York but continued in markets other than in the State of New York. That the plaintiff was afforded the opportunity to mitigate his damages by selling his securities in the available markets, but did not avail himself thereof.

11. That by reason of the foregoing, the institution and maintenance of this action as a class action is an abuse and an undue burden on the Court and this Court should not permit this matter to proceed as a class action.

ANSWER OF DEFENDANT MONARCH FUNDING CORP. TO ORIGINAL COMPLAINT

AS AND FOR A CROSS ACTION FOR INDEMNITY AGAINST THE DEFENDANT, SOUTHEASTERN PROPERTIES, INC. THIS DEFENDANT ALLEGES:

12. The allegations contained in paragraphs 8 through 11 of the foregoing answer are incorporated herein by reference.

13. That shortly after the effective date of the public offering of the Common Stock of Southeastern and prior to the sale of its shares, the defendant, Monarch entered into an Underwriting Agreement with the defendant, Southeastern. That in said Agreement it was provided, among other things, that Southeastern agreed to indemnify and hold this defendant (The Underwriter) free and harmless from and against any claims and expenses including reasonable legal or other expenses to be incurred by the Underwriter in the defense of such claims to the extent that such claims and expenses shall arise out of and be based upon any untrue statement or alleged untrue statement or material fact contained in the Registration Statement or Prospectus, or which shall arise out of or be based upon any alleged omission to state therein a material fact required to be stated therein or otherwise necessary.

ANSWER OF DEFENDANT MONARCH FUNDING CORP. TO ORIGINAL COMPLAINT

14. If Monarch is found to be liable to the plaintiff or to any member of the class, if any, in which the plaintiff is a member, in any amount for damages resulting from an untrue statement or material omission of a required or necessary statement, this defendant is entitled to indemnity over in like amount from the defendant Southeastern and in addition, entitled to reimbursement for all attorneys' fees, legal expenses, costs incurred by this defendant in this action and other consequential damages resulting from the matters set forth herein.

15. That after the institution of this action and prior to the filing of this answer, this defendant gave Southeastern written notice of its claim for indemnity and the said Southeastern has failed and refused to acknowledge such liability and to come in and defend this defendant.

AS AND FOR A CROSS ACTION AGAINST ITS CO-DEFENDANTS AND EACH OF THEM, THIS DEFENDANT ALLEGES:

16. The allegations contained in Paragraph 8 through Paragraph 11 of this answer are incorporated herein by reference.

ANSWER OF DEFENDANT MONARCH FUNDING CORP. TO ORIGINAL COMPLAINT

17. That the defendants, HENRY, McCORD, FORRESTER & RICHARDSON, as General Counsel to Southeastern, and Edith Cooper, as attorney for this defendant, and SCHNEIDER & BARATTA, as attorneys for Southeastern, represented to the defendant Monarch, prior to the sale by this defendant of any shares of Common Stock in the said public offering, that Southeastern has received authority to offer and sell its Common Stock in the States of New York and New Jersey. That if said representations were untrue, this defendant did not know that they were untrue and acted in the belief and in reliance upon the truth thereof and solely in reliance thereof, did thereafter offer and sell shares of Common Stock of Southeastern in said public offering.

18. That if the aforesaid representations were untrue and if as a result thereof, the securities of Southeastern sold by this defendant in the public offering were not legally authorized for offer or sale in the State of New York, this defendant may sustain damages amounting to $1,000,000.00.

19. That the co-defendants of Monarch were guilty of wilful misfeasance, bad faith and gross negligence in the performance of their respective duties as issuer,

attorneys for the issuer, attorneys for the underwriter and as principals controlling the issuer, in that they had actual knowledge of the falsity of the said representations or acted in reckless disregard of their obligations and duties in respect of the public offering.

20. That by reason of the foregoing, the defendant Monarch is entitled to recover its legal expenses in an amount estimated at $25,000.00 and punitive and exemplary damages in the sum of $200,000.00.

WHEREFORE, defendant, MONARCH FUNDING CORP. respectfully prays the Court:

1. That the plaintiff recover nothing of this defendant, and that the plaintiff's action be dismissed as to this defendant; and

2. That the costs of this action be taxed against the plaintiff; and

3. That in the event the plaintiff recovers judgment against this defendant, this defendant recover from its co-defendants judgment over in like amount plus attorneys' fees and defense costs together with punitive and exemplary damages in the sum of $200,000.00; and

ANSWER OF DEFENDANT MONARCH FUNDING CORP. TO ORIGINAL COMPLAINT

4. That this defendant be granted a judgment against the defendant, SOUTHEASTERN PROPERTIES, INC. to reimburse it for attorneys' fees and defense costs herein; and

5. For such other and further relief as to the Court may seem just and proper.

KANE, KESSLER, PREISS, RAND
& PROUJANSKY, P.C.
By: s/ EDMUND PREISS
Attorneys for the Defendant
Monarch Funding Corp.
Office & P. O. Address
60 Wall Street
New York, New York 10005
(212) HA5-1222

OPINION OF JUDGE GURFEIN DATED JUNE 28, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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APPEARANCES

SHATZKIN & COOPER, Attorneys for Plaintiff, By: Edward Labaton, Of Counsel, New York, New York.

HOWARD J. GOLDSTEIN, Attorney for Defendant Schneider & Baratta, New York, New York.

GURFEIN, D. J.:

This is a motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted by one of the defendants, the law firm of Schneider & Baratta.

This is a purported class action seeking money damages and rescission on behalf of a class alleged to consist of all persons who purchased any of the 200,000 shares of common stock of Southeastern Properties, Inc. ("Southeastern") pursuant to a prospectus dated January 31, 1972. The moving defendant is a law firm which is alleged to have acted as special counsel to Southeastern in connection with the public offering and to have aided

in the preparation of the prospectus and registration statement.

The complaint alleges that in order to sell the 200,000 shares of common stock pursuant to the prospectus, Southeastern was required to make appropriate filings with the Attorneys General of New York and New Jersey, that such filings were not made and that as a consequence of such failure, the Attorney General of New York caused trading in the stock to be halted in New York State. It is alleged that the registration statement and prospectus did not disclose that the aforementioned filings were required, did not disclose that these filings had not been made, and did not state that as a result of defendants' failure to make such filings, the securities sold to the plaintiff and to the class he represents are not freely tradeable. There is no contention by the moving party that the State filings were not required.

The other material allegation is the alleged failure to disclose that prior to the effective date of the registration Southeastern had commenced negotiations with Apollo Industries, Inc. regarding an acquisition of Southeastern by Apollo.

OPINION OF JUDGE GURFEIN DATED JUNE 28, 1972

Violations are alleged of Sections 11, 12(2) and 17(a) of the 1933 Securities Act and Section 10(b) of the 1934 Securities Exchange Act and rules thereunder. Jurisdiction is alleged under Section 22(2) of the Securities Act and Section 27 of the Exchange Act.

Since there has been no discovery yet, I shall not treat the motion to dismiss the complaint as a motion for summary judgment.

On a motion to dismiss, the complaint must be viewed in the light most favorable to the plaintiff. *Iroquois Industries, Inc. v. Syracuse China Corporation*, 417 F. 2d 963, 965 (2 Cir. 1969), cert. denied, 399 U. S. 909 (1970).

A fact which may affect the free marketability of shares is, on its face, material. See *Securities and Exchange Commission v. Texas Gulf Sulphur Co.*, 401 F. 2d 833, 849 (2 Cir. 1968), cert. denied, 394 U. S. 976 (1969); *Kohler v. Kohler Co.*, 319 F. 2d 634, 642 (7 Cir. 1963); 6 Loss, Securities Regulation 3544 (2d Ed. Supp. 1969). The issuer must disclose any fact "which in reasonable and objective contemplation might affect the value of the corporation's stock or securities." *Kohler v. Kohler Co., supra.* And a transaction involving a

merger or substantial acquisition would, on its face, be material since it reasonably might affect the value of the corporation's stock.

It may be that, after discovery, the moving party will be able to establish that there are no facts to sustain relief. In that case he may move for summary judgment under Rule 56.

The motion is denied.

It is so ordered.

Dated: June 28, 1972

M. I. GURFEIN
U.S.D.J.

NOTICE OF MOTION FOR A PROTECTIVE ORDER PURSUANT TO FEDERAL RULE 26(c) DATED JUNE 20, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavits of William L. Manning and Everett A. Frohlich, the undersigned will move this Court, at Room 532, United States Court House, Foley Square, City of New York, on the 29th day of June, 1972, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, granting the following relief:

1. Setting the offices of Southeastern Properties, Inc. ("Southeastern") in Chattanooga, Tennessee, rather than offices of plaintiff's attorneys in New York, New York as the place for the production of documents by, and the deposition of, defendants Southeastern, Anthony J. DeMatteo, William L. Manning, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III and Chalmers K. Smith on the ground that conducting such proceedings in New York pursuant to plaintiff's notices would inflict

great harm on Southeastern, cause tremendous inconvenience to said eight defendants, and be manifestly more expensive than having plaintiff's attorneys travel to Chattanooga; and

2. Such other and further relief as to this Court seems just and proper.

PLEASE TAKE FURTHER NOTICE, that you are hereby required to serve any and all affidavits and memoranda to be used in answer to this motion on the undersigned no later than noon of the day preceding the return day.

Dated: New York, New York
June 20, 1972

SCHWARTZ, MERMELSTEIN, BURNS,
LESSER & JACOBY
Attorneys for Defendants
Southeastern Properties, Inc.,
Anthony J. DeMatteo, William L.
Manning, Ronald Ullenberg, David L.
Boyd, H. T. Braddock, George E.
McGee, III and Chalmers K. Smith
Office and P. O. Address
445 Park Avenue
New York, New York 10022
Phone: 980-3200

NOTICE OF MOTION FOR A PROTECTIVE ORDER PURSUANT TO FEDERAL RULE 26(c) DATED JUNE 20, 1972

TO:

SHATZKIN & COOPER
Attorneys for Plaintiff
235 East 42nd Street
New York, New York

HART & HUME, ESQS.
Attorneys for Defendants
James Henry and Henry, McCord, Forrester
& Richardson
10 East 40th Street
New York, New York 10016

KANE, KESSLER, PREISS, RAND & PROUJANSKY, P.C.
Attorneys for Defendant
Monarch Funding Corp.
60 Wall Street
New York, New York 10005

HOWARD GOLDSTEIN, ESQ.
Attorney for Defendant
Schneider & Baratta
1250 Broadway
New York, New York 10001

AFFIDAVIT OF EVERETT A. FROHLICH IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

EVERETT A. FROHLICH, being duly sworn, deposes and says:

1. I am a member of the firm of Schwartz, Mermelstein, Burns, Lesser & Jacoby, attorneys for defendants Southeastern Properties, Inc. ("Southeastern"), Anthony J. DeMatteo, William L. Manning, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III and Chalmers K. Smith (the "defendants"), and am fully familiar with all proceedings had herein to date.

2. I make this affidavit in accordance with Rule 9 of the General Rules of this Court, in support of the motion of the aforementioned defendants pursuant to Federal Rule 26(c) for an Order setting Chattanooga, Tennessee as the place for plaintiff's noticed discovery of these defendants.

AFFIDAVIT OF EVERETT A. FROHLICH IN SUPPORT OF MOTION

3. This firm was retained by the defendants on June 9, 1972 for the purpose of defending the instant action. As of that date, our files showed merely the summons and complaint, several stipulations extending defendants' time to answer, and two discovery notices, one for the production of documents by Southeastern and the other for the deposition of Anthony J. DeMatteo.

4. On June 9, 1972 I called Mr. Lebaton of the firm of Shatzkin & Cooper, attorneys for plaintiff. I identified this firm as attorneys for defendants and requested that these defendants have until July 6, 1972 to answer or otherwise move with respect to the complaint. I also requested that the scheduled production of documents by Southeastern be adjourned to July 6, 1972, and that the examination of Anthony J. DeMatteo be adjourned to July 12, 1972. Mr. Lebaton consented to these requests. I also stated our position that the appropriate place for these discovery proceedings was Chattanooga, Tennessee. After considerable discussion, we could not come to an accord on this issue but agreed that any motion for a protective order would be made by June 20, 1972.

5. The following Tuesday, June 13, 1972, when I was preparing a stipulation formalizing the above described

agreement, I received a memorandum from Shatzkin & Cooper, a true copy of which is annexed hereto as Exhibit A, which purported to reschedule those discovery proceedings described above and several of which we were not aware. The rescheduled dates for the production of documents by Southeastern and the examination of Anthony J. DeMatteo were not those which I agreed to with Mr. Lebaton. Because of this unilateral and irregular action by attorneys for plaintiff, I must consider the discovery proceedings for those defendants represented by this firm as having been noticed but adjourned *sine die* until we can again agree on appropriate dates. In order to avoid further confusion of the schedule, I did not submit a stipulation incorporating our June 9, 1972 agreement.

6. On June 16, 1972, an associate of my firm, Carl G. Bartholomaus, again called Mr. Lebaton to ask that the discovery proceedings be transferred to Chattanooga and to clarify plaintiff's memorandum (Exhibit A). Mr. Lebaton persisted in his demand that discovery proceedings be had in his office in New York City, maintaining that defendants should travel to New York because of the convenience of the New York attorneys who are involved.

AFFIDAVIT OF EVERETT A. FROHLICH IN SUPPORT OF MOTION

7. This office has polled each of the other four attorneys located in New York who represent parties in this action. With the exception of attorneys for plaintiff and the attorneys for defendant Monarch Funding Corp., all have agreed not to oppose this motion for an Order setting Chattanooga, Tennessee as the place for discovery of the aforementioned defendants. An inconvenience to attorneys should be weighed against inconvenience to the numerous defendants.

8. Accordingly, there is no compelling reason to impede the operation of Southeastern or inconvenience those defendants who live in Tennessee with a trip to New York when a sensible schedule for discovery could be arranged in Tennessee involving the travel of plaintiff's attorney to Tennessee, rather than the travel of numerous defendants to New York.

WHEREFORE, defendants respectfully move this Court for relief under Federal Rule 26(c) in the form of an Order setting the offices of Southeastern in Chattanooga, Tennessee, as the place for those of plaintiff's discovery proceedings which are addressed to the defendants referred to in paragraph one above, and further for an Order granting such other and further relief as to the Court seems just and proper.

(Sworn to by Everett A. Frohlich, June 20, 1972.)

EXHIBIT A, ANNEXED TO AFFIDAVIT OF EVERETT A. FROHLICH--
MEMORANDUM.

SHATZKIN · AND · COOPER · ATTORNEYS
235 EAST 42ND STREET · · NEW YORK, N. Y. 10017 · · MURRAY HILL 7-8800

June 12, 1972

Memorandum to All Counsel

Re: Stuart D. Wechsler, etc., v.
Southeastern Properties, Inc. et al.

On the basis of several requests to adjourn the depositions scheduled to begin on June 19, 1972, we have agreed that the depositions previously scheduled for 10:00 A.M. at the office of the undersigned, 235 E. 42nd Street, New York, N.Y. will be rescheduled as follows:

Name of Party	Previously Scheduled	Rescheduled
Southeastern Properties	June 19th	August 15th
Anthony J. DeMatteo	June 20th	July 14th
William A. Manning	June 21st	August 1st
Henry, McCord, Forrester & Richardson (by James Henry)	June 22nd	August 3rd
James Henry	June 23rd	August 8th
Monarch Funding Corp. (by Leo Eisenberg)	June 26th	August 10th
Schneider & Baratta	June 27th	July 12th

These adjournments have been consented to on the express condition that any motions addressed to the notices of deposition or the notices to produce are to be made by June 20th.

Very truly yours,

Shatzkin & Cooper

AFFIDAVIT OF WILLIAM L. MANNING IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

- - - - - -

State of Tennessee,

County of Hamilton, ss:

WILLIAM L. MANNING, being duly sworn, deposes and says:

1. I am one of the defendants herein and Vice-President of defendant Southeastern Properties, Inc. ("Southeastern"), the corporate defendant named herein. I am fully familiar with all proceedings had in this action to date.

2. Both my residence and the sole office of Southeastern are in the City of Chattanooga, Tennessee.

3. I make this affidavit in support of the motion of defendants Southeastern, Anthony J. DeMatteo, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III, Chalmers K. Smith, and myself for an Order pursuant to Federal Rule of Civil Procedure 26(c) directing that plaintiff's discovery proceeding with respect to each of the above mentioned defendants be conducted

in Chattanooga, Tennessee, where each of the defendants has his residence or place of business.

4. The complaint herein alleges that Southeastern together with its officers, directors, and counsel violated the security laws of the State of New York and of the United States in that they caused stock of Southeastern to be issued with alleged material omissions from the prospectus, and that, subsequent to such issuance, trading in Southeastern stock was suspended by the Attorney General of the State of New York. Plaintiff alleges, both for himself and in a class action for all others similarly situated, that as a purchaser of Southeastern's stock he has been damaged and accordingly may recover against defendants for such damages.

5. The above mentioned defendants, pursuant to a stipulation agreed to on June 9, 1972, have until July 6, 1972, to answer or otherwise move with respect to such complaint. Plaintiff, however, has served numerous discovery notices upon all the defendants herein. The following is a list summarizing these notices:

AFFIDAVIT OF WILLIAM L. MANNING IN SUPPORT OF MOTION

Discovery Proceeding	Date	Party-Defendant	Residence or Business Address
A. Production of documents.	6/12/72	Southeastern Properties, Inc.	Chattanooga, Tennessee
B. Production of documents.	6/12/72	Anthony J. DeMatteo	Chattanooga, Tennessee
C. Production of documents.	6/12/72	William L. Manning	Chattanooga, Tennessee
D. Production of documents.	6/12/72	James Henry	Chattanooga, Tennessee
E. Production of documents.	6/12/72	Henry, McCord, Forrester & Richardson	Chattanooga, Tennessee
F. Production of documents.	6/12/72	Schneider & Baratta	New York, New York
G. Production of documents.	6/12/72	Monarch Funding Corp.	New York, New York
H. Deposition.	6/19/72	Southeastern Properties, Inc. by its directors Anthony J. DeMatteo, William L. Manning, James Henry, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III and Chalmers K. Smith	Chattanooga, Tennessee
I. Deposition.	6/20/72	Anthony J. DeMatteo	Chattanooga, Tennessee
J. Deposition.	6/21/72	William L. Manning	Chattanooga, Tennessee
K. Deposition.	6/22/72	Henry, McCord, Forrester & Richardson	Chattanooga, Tennessee

AFFIDAVIT OF WILLIAM L. MANNING IN SUPPORT OF MOTION

L. Deposition.	6/23/72	James Henry	Chattanooga, Tennessee
M. Deposition.	6/26/72	Monarch Funding Company	New York, New York
N. Deposition.	6/27/72	Schneider & Baratta	New York, New York

Pursuant to the same stipulation as was agreed to on June 9, 1972, between attorneys for the plaintiff and those defendants referred to in Paragraph 3 above, several of these discovery proceedings were adjourned, but the conduct of such proceedings was made subject to the outcome of any motion which defendant may make by June 20, 1972.

6. As is apparent from an examination of plaintiff's discovery notices described above, plaintiff's attorneys designated their office in New York City as the place for the production of documents and the taking of the deposition of each of the defendants. The conduct of these and any other discovery proceedings by plaintiff's attorneys in New York could hardly be in a place less convenient for myself and the other defendants referred to in Paragraph 2 above who have their homes and places of business in Tennessee, and more harmful to the business affairs of Southeastern.

AFFIDAVIT OF WILLIAM L. MANNING IN SUPPORT OF MOTION

7. Southeastern has only three full-time employees. Defendant Anthony J. DeMatteo, President of Southeastern, and I are the only officers and operating employees of Southeastern. The company has but one other employee, a secretary to answer the phone and help with correspondence.

8. It is the business of Southeastern to acquire, hold, develop and resell commercial and residential real property in the States of Tennessee and Georgia. The only two operating employees of Southeastern, Mr. DeMatteo and I, are in constant communication with prospective buyers, contractors, and developers of land who are working on or who may be interested in purchasing the real estate holdings of the company. For example, Southeastern is currently developing one of its properties in Rhea County, Tennessee. The development of this property, which borders on a lake, involves the construction of roads and the installation of numerous docks extending out into the water. The supervision of this project, which is approximately sixty (60) miles distant from Chattanooga, requires that Mr. DeMatteo and I each travel to the parcel two or three times each week to supervise the construction. Work on this project will continue for approximately the next half year. In addition, Mr. DeMatteo and I must be available to receive

calls from motel chains, home builders, developers of land and other businesses who are interested in purchasing, leasing or obtaining an option on any one of Southeastern's numerous properties. These inquiries often require us to meet with the customers at the property itself or travel to Atlanta, Knoxville or Nashville for the purpose of negotiating a deal. Often customers call Southeastern in the morning and expect to meet with one or both of us that same afternoon to discuss the parcel.

9. The business of Southeastern also requires us to be in constant communication on a daily basis with real estate brokers throughout the Southeast part of the United States in an attempt to learn of parcels of land which have just come on the market at favorable prices. We must be able to indicate our interest and travel on a moment's notice to inspect such land and to negotiate terms with the owner.

10. The task of supervising the maintenance of these parcels currently held by Southeastern requires our constant attention to the problems of contractors, attorneys and real estate agents. Often our business day extends its demands far into the night. The financial success of Southeastern in the highly competitive real

estate business depends in large part on our immediate availability to recognize and take advantage of those opportunities which arise for the company. This is especially true in the spring, summer and fall months of the year which are obviously most important in a business such as this as it is at these times when the real estate market is the busiest and when opportunities for the sale and purchase of realty abound. This is because it is in the warmer months of the year when the land is most attractive, when builders acquire land for the purpose of home construction, and when contractors of Southeastern are able to work on and develop Southeastern's own properties.

11. Mr. DeMatteo's area of expertise, authority and function in Southeastern differs from mine in that Mr. DeMatteo works primarily with attorneys and real estate brokers and manages the legal and financial affairs of the company. I am more intimately involved with contacting buyers and sellers in the field and supervising contracted developmental work for Southeastern.

12. If Mr. DeMatteo or I were required to travel to New York once for the production of records of Southeastern and again for a potentially protracted examination

of both Southeastern and ourselves, it would mean that the company would be virtually without management or control during each or both of our absences, as it is not possible for one of us to cover the other's area of responsibility in the management of the company. Such a state of affairs would not be in the best interest of the shareholders or indeed the plaintiff himself for in our absence, several opportunities for Southeastern could be lost.

13. Finally, I would like to speak for all the aforementioned individual defendants who live in Tennessee and, as is evident from the recent prospectus of Southeastern which is annexed hereto as Exhibit A, while directors of Southeastern also have important business affairs which require their presence in Chattanooga. Plaintiff should not be allowed to harass us personally and take us away from our homes and employment by requiring our attendance at discovery proceedings in New York when his attorney could as easily travel to Chattanooga for this purpose. I rarely travel to New York and would find it a great personal inconvenience to do so. I believe that the other six individual defendants referred to in Paragraph 2 who live in Tennessee share my sentiments in this regard. Furthermore, it would be manifestly

less expensive for plaintiff's attorney to travel to Chattanooga for purposes of discovery than to have seven businessmen, who did not choose to bring this action, interrupt their personal and business affairs for the trip to New York for the convenience of plaintiff.

WHEREFORE, I respectfully request relief under Federal Rule 26(c) in the form of an Order setting the offices of Southeastern in Chattanooga, Tennessee, as the place for those of plaintiff's discovery proceedings which are addressed to the aforementioned defendants, and further for an Order granting such other and further relief as to this Court seems just and proper.

(Sworn to by William L. Manning, June 16, 1972.)

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

PROSPECTUS

SOUTHEASTERN PROPERTIES, INC.

(A Delaware Corporation)

200,000 Shares Common Stock

(Par Value $.01 Per Share)

THE SECURITIES OFFERED HEREBY INVOLVE A HIGH DEGREE OF RISK

Prior to this offering, there has been no market for the Common Stock of SOUTHEASTERN PROPERTIES, INC. (the "Company") and there can be no assurance that such a market will develop as a result of this offering. The price at which the shares being offered hereby are to be sold was determined by negotiations between the Company and Monarch Funding Corp. (the "Underwriter"). As recently as April and May 1971, seven (7) persons purchased an aggregate of 16,956 shares of the Company's Common Stock at $4.13 per share. There has been no significant change in the business of the Company since May 1971.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public	Underwriting Discounts and Commissions	Proceeds to Company (1)
Per Share	$ 5.00	$ .50	$ 4.50
Total	$1,000,000	$100,000	$900,000

(1) Before deducting filing, printing, legal, accounting and other expenses estimated at $55,824 (approximately $.28 per share) payable by the Company.

The shares are being offered by the Underwriter as agent for the Company on a best efforts, all or none basis. All sums collected from subscribers will be held in a separate bank account to be opened for the benefit of subscribers in the Manufacturers Hanover Trust Company, 40 Wall Street, New York, N.Y. and refunded promptly, in full, without interest, if all of the shares offered hereby are not sold for cash within 45 days from the date of this Prospectus unless extended for an additional 45 days and the offering will be withdrawn (see "Underwriting" herein).

This offering involves:

(a) Special risks concerning the Company (for information concerning such risk factors, see "Introductory Statement," page 3).

(b) Immediate dilution in that the book value of the common stock will be less than the public offering price (see "Dilution," page 5).

(c) Significant additional underwriting compensation as the Company has agreed to concessions including indemnification (for specific information concerning these factors, see "Underwriting," page 19).

THE ATTORNEYS GENERAL OF THE STATES OF NEW YORK AND OF NEW JERSEY HAVE NOT PASSED ON OR ENDORSED THE MERITS OF THIS OFFERING. THE FILING OF THE WITHIN OFFERING WITH THE BUREAU OF SECURITIES DOES NOT CONSTITUTE APPROVAL OF THE ISSUE OR THE SALE THEREOF BY THE BUREAU OF SECURITIES OR THE DEPARTMENT OF LAW AND PUBLIC SAFETY OF NEW JERSEY. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

MONARCH FUNDING CORP.

79 Wall Street, New York, New York

The Date of this Prospectus is January 31, 1972

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

This Prospectus does not constitute an offer or a solicitation by the Company or the Underwriter to sell securities in any state to any person to whom it is unlawful to make such offer. No dealers, salesman or any other person has been authorized to give any information or to make any representation other than those contained in this Prospectus and, if given or made, such information or representations must not be relied upon as having been authorized by the Company or the Underwriter. Except where otherwise indicated herein, this Prospectus speaks as of its date and neither the delivery of this Prospectus nor any sale made hereunder shall, under any circumstances, create an implication that the affairs of the Company have continued without change since the date hereof.

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Until April 30, 1972 (90 days after the first offering of the registered securities), all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a Prospectus. This is in addition to the obligations of dealers to deliver a Prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

These securities are offered subject to prior sale, withdrawal, cancellation or modification of the offer without notice, to delivery and acceptance by the Underwriter, to the approval of counsel, and to certain other conditions. It is expected that delivery of the shares will be made on or about April 30, 1972.

IN CONNECTION WITH THE OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE COMMON STOCK AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME AS, AT THE TIME OF THE OFFERING, THERE IS NO ESTABLISHED MARKET FOR THE COMMON STOCK OF THE COMPANY, THE TRANSACTIONS OF THE UNDERWRITER INITIALLY MAY BE A DOMINANT INFLUENCE IN THE MARKET FOR SUCH STOCK.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

INTRODUCTORY STATEMENT

The Company

SOUTHEASTERN PROPERTIES, INC. (the "Company"), was incorporated under the Laws of the State of Delaware in May 1971 and is engaged or presently intends to engage in the business of acquiring, holding, developing and/or re-selling real property, both commercial and residential (see "History and Business," page 8). The Company maintains executive offices at 6503 Slater Road, Chattanooga, Tennessee 37421, telephone number (615) 892-7256. The Company presently owns seventeen parcels of unimproved real property twelve of which are located in the Chattanooga, Tennessee metropolitan area and the balance in the States of Tennessee and Georgia. To date, the Company has consummated the sale of two parcels of property, (see "History and Business—Recent Developments," page 13) but has neither developed nor commenced development of any of its other properties.

Officers and Directors of the Company presently own of record or beneficially 100% of the Company's outstanding common stock. Assuming the successful sale of the shares offered hereby, officers and directors as a group will own of record or beneficially approximately 54% of the outstanding shares of common stock of the Company, and should, in the future, be able to elect a Board of Directors without regard to the stockholdings of the public. The outstanding capital stock in International Land Locators, Inc., (the Company's principal shareholder), has been pledged as collateral security for the payment of certain obligations. A default by International Land Locators, Inc. in the payment of such obligations could result in a change of control of the Company. (See "Certain Transactions", page 17.)

Risk Factors of the Offering;

In analyzing this offering, prospective investors should consider the following high-risk factors:

1. Lack of Substantial Cash Investment by Company or Its Principals.

Neither the Company nor any of its officers and directors have been required to put up any cash in the acquisition of the properties comprising almost all of the Company's assets and thus, investors should be aware that they, rather than principals of the Company, are making the initial major cash investment in the Company's business. (See "History and Business—Organization," page 8, and "Certain Transactions," page 17).

2. Lack of Operating Experience.

The Company is in its development stage. It has no experience in real estate development. As of September 30, 1971 the Company had unrecovered and unamortized Promotional, Exploratory and Development Costs of $55,897. There can be no assurance that the future operations of the Company will result in the amortization of such deferred costs.

3. Payments to be made Directly and Indirectly to Officers.

The Company's operating officers, Messrs. DeMatteo and Manning, each receive an annual salary of $25,000. Unless the Company is able to produce income from its operations, such salaries will be paid from the proceeds of this offering. Additionally, approximately $199,870 of the proceeds of this offering will be utilized to satisfy, in full, a note under which the prime

obligor is International Land Locators, Inc., a company in which the outstanding capital stock is owned by Messrs. DeMatteo and Manning. (See "Application of Proceeds" page 6, "History and Business—Organization" page 8, and "Certain Transactions", page 17.)

4. Zoning Requirements Governing Use.

Real property is subject to local zoning laws governing the use and development thereof. In the event the Company desires to develop real property for purposes not presently permitted by the local zoning regulations, permission must be obtained from local authorities. A substantial portion of the Company's properties are not zoned for their proposed development use. There is no assurance that, as required, a variance of zoning regulations will be granted by local authorities. The refusal to grant zoning variances may adversely affect the saleability of certain of the Company's properties.

5. Dependency Upon Construction Loans and Permanent Financing.

The Company's ability to develop its real property is dependent upon obtaining construction loans and permanent financing to defray the major portion of the costs of such development. There can be no assurance that construction loans and permanent financing will be available to the Company when and as required, or if available, that the terms of such loans and financing will be favorable to the Company. (See "Application of Proceeds," page 6, and "History and Business—Proposed Development," page 12).

6. No Assurance of Saleability of Property.

Assuming the availability of construction loans and permanent financing, the Company intends to use a substantial portion of the proceeds of this offering to sub-divine and develop certain of the properties owned by it. There is no assurance that such properties, once sub-divided and developed, will be readily saleable. (See "Application of Proceeds" page 6 and "History and Business—Proposed Development, page 12).

7. Lack of Sales Organization.

With the exception of the residential property located at Watts Bar Lake (see "History and Business—Proposed Development," page 12), the Company does not intend to offer its residential property, once sub-divided and developed, in lots, for sale to the public, in general, and, therefore, does not maintain a sales organization for that purpose. The Company will endeavor, however, to market the property, in bulk, to conventional or modular home builders. There is no assurance that the Company will be able to sell such property, in bulk, and in the event it is unable to so do, it will be required to either engage the services of third-party agencies or employ salesmen in an effort to sell individual lots to the public. There is no assurance that third-party agencies or salesmen will be readily available.

8. Risks Inherent to Registrant's Business.

The Company's business is subject to all of the other risks normally inherent in its type of business. These include unpredictable changes in the locations of commercial and industrial areas, shifts in population, and fluctuations of the real estate market which may occur in the geographical area of the Company's holdings as well as general economic conditions.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

9. Lack of Experience in Subdivision and Development.

The Company's present officers have little experience in the sub-division and development of real property and accordingly, would be required to either rely on the experience of several of the Company's directors or to retain the services of third parties in order to develop and sub-divide such property. There is no assurance that the Company's directors or third parties will be available, when required, for such purposes (see "Management," page 15).

10. Recent Sales.

The Company contracted to sell three of the parcels of property owned by it. Two of said sales have been consummated. The remaining contract contains certain terms and conditions which, if not fulfilled by the Company, will negate the sale. There can be no assurance that the Company will be able to consummate that transaction or further that it will, in the future, be able to dispose of any of its other properties which it may elect not to develop. (See "History and Business—Recent Developments," page 13.)

11. Lack of Trading Market for Company's Common Stock.

There is no present trading market for the Company's securities and there is no assurance that a market will develop. The offering price for the common shares offered hereunder has been determined by negotiations between the Company and the Underwriter and bears no relationship to assets or book value.

12. Recent Sales of Company's Common Stocks.

In April and May, 1971, seven (7) persons (all directors of the Company) purchased an aggregate of 16,956 shares for the sum of $70,000 ($4.13 per share). There has been no significant change in the business of the Company since the date of purchase to support the increased public offering price.

13. Options Granted to Directors.

Each director of the Company has been granted options to purchase 4,844 shares of the Company's common stock (an aggregate of 33,908 shares) at a price of $3.30 per share, which options are exercisable for a period of five (5) years commencing June 1, 1971. The exercise of such options will further dilute the stockholdings of the public (see "Options to Purchase Securities—Directors Options" page 18 and "Introductory Statement—Dilution," page 5).

14. No Dividends Anticipated.

The Company does not anticipate that it will pay dividends in the foreseeable future.

Dilution

Present stockholders own 235,000 shares of the outstanding stock for which they invested $70,000 in cash and contributed real estate, valued, net of existing mortgages and a note payable in the face amount of $250,000, at $1,069,087. Accordingly, as at September 30, 1971, present stockholders' equity aggregated $1,139,087 ($4.84 per share).. The real estate contributed by International Land Locators, Inc. was acquired by it in consideration of its assumption of

existing mortgages totalling $403,000 and the issuance by it of $1,578,000 in promissory notes payable over 10 years with interest at 4% per annum.

Assuming the sale of the 200,000 shares offered by this prospectus, the present stockholders will own 56% of the outstanding stock and the public investors will own 200,000 shares or 44% of the Company for which they will have invested and contributed an aggregate of $1,000,000 ($5.00 per share). Upon completion of the offering, the aggregate book value of the shares then to be outstanding will be approximately $2,039,087, equivalent to $4.68 per share. Accordingly, the purchasers of the shares offered hereby will suffer an immediate dilution of $.32 per share (book value amounts do not give effect to the issue of shares upon exercise of options).

All of the Company's present directors have options to acquire 4,844 shares of the Company's common stock (an aggregate of 33,908 shares) at a price of $3.30 per share, which options may be exercised within a period of five (5) years commencing June 1, 1971.

For the life of the options, the holders have an opportunity to profit from a rise in the market price of the common stock over the exercise price of the options with resulting dilution of the equity position of the other holders of the common stock. At such time when the holders of options may be expected to exercise, the Company may otherwise be able to obtain additional equity capital by the public sale of its common stock on terms more favorable than those provided in the warrants.

APPLICATION OF PROCEEDS

If the maximum number of shares offered hereby are sold, the net proceeds after deducting underwriter's commissions and discounts and expenses of this offering of approximately $155,824 will be $844,176. The net proceeds will be allocated as follows:

1. Approximately $199,870 will be used to satisfy a short-term note payable to the National Bank of North America as agent for Wilmart Associates. The prime obligor of this note is International Land Locators, Inc., a company in which Messrs. DeMatteo and Manning are the sole shareholders. The payment of this obligation was assumed by the Company as part of the purchase price for the parcels of real property acquired by the Company from International Land Locators. For details of such acquisition, see "History and Business," page 8, and "Certain Transactions," page 17.

2. $90,000 will be used to satisfy a short-term bank note, the proceeds of which were used by the Company as working capital.

3. $100,000 will be used as working capital for the purpose of paying, among other things, the salaries of employees including the salaries of officers of the Company as well as interest and amortization on the mortgages presently existing on the Company's properties.

4. The approximate balance of $454,306 will be used in the development of the Company's properties. Such funds are to be allocated as follows:

(i) $30,000 will be used to sub-divide Parcel No. 12 located on Watts Bar Lake into 50 lakefront resort home sites.

(ii) Approximately $100,000 will be used to partially subdivide and install roads in Parcel No. 15.

(iii) The balance of $324,306 will be used to develop 4 acres of Parcel No. 2 into a 200-room motel including restaurant and lounge. In order to accomplish this development, The Company would be required to obtain a construction loan and permanent financing in the approximate sum of $1,600,000. Further, as a condition precedent to such construction loan or permanent financing, the Company may be required to expend approximately $132,650 of the balance of $324,306 to satisfy mortgages presently existing on that parcel. The Company has no assurance that construction loans or permanent financing will be available to it when required or if available, that the terms of such loans or financings will be favorable to the Company. If the Company is unable to arrange for construction loans and permanent financing in the sum of $1,600,000 for the development of this motel complex, then the balance of $324,306 will be retained by the Company for the future development of its other properties.

In the event the Company's financial requirements increase, the Company may deem it necessary or advisable to obtain additional bank or public financing. However, the Company has no assurance that public financing will be available or that bank loans will be available, if so required or desired, or if available, that the terms of such loans or financing may be favorable to the Company. Pending the permanent application of the proceeds, the Company may invest some or all of the proceeds in certificates of deposit, short-term Government notes or similar securities or commercial obligations.

CAPITALIZATION

The following table sets forth the capitalization of the Company as of January 25, 1972 and is adjusted to reflect the sale of the shares offered hereby.

Title of Class	Authorized	Outstanding	As Adjusted
Common Stock, $.01 par value	1,000,000 shs.	235,000 shs.	435,000 shs.(1)
4% Short-term note due to National Bank of North America as agent for Wilmart Associates	$ 250,000	$ 199,878	—
5% & 6% Notes secured by Mortgages on Real Property	$ 403,000	$ 345,333	$ 345,333 (2)
9¼% Short Term Note to General Service Corp.	$ 90,000	$ 90,000	—
Options to Purchase Common Stock (3)	33,908 opts.	33,908 opts.	33,908 opts.
Qualified Stock Options (4)(5)	20,000 opts.	—	—

(1) Assuming the sale of the shares offered hereby, but exclusive of the shares reserved for the issuance of options (see "Options to Purchase Securities," page 17).

(2) Represents existing mortgages on diverse parcels of real property owned by the Company which may be required to be satisfied in order to obtain construction loans (see "Application of Proceeds," page 6).

(3) The options outstanding have been issued to the present directors of the Company and are exercisable for a period of five years commencing June 1, 1971 at a price of $3.30 per share (see "Options to Purchase Securities" for description of such securities).

(4) See "Options to Purchase Securities" for a description of the terms and conditions of such securities.

(5) Subject to grant and/or exercise of options subsequent to January 31, 1972.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

HISTORY AND BUSINESS

Organization

The Company was incorporated as MODULAR HOMESITES OF AMERICA, INC., in May 1971 under the Laws of the State of Delaware by Anthony J. DeMatteo and William L. Manning, President and Vice President of the Company, respectively. Mr. DeMatteo and Mr. Manning may be deemed parents and founders of the Company as those terms are defined under the General Rules and Regulations of the Securities Act of 1933, as amended (see "Management," page 15, "Principal Holders of Stock," page 16 and "Certain Transactions," page 17). In August 1971, the name of the Company was changed to LAND RESOURCES CORPORATION and in November 1971, to its present form.

In April 1971, International Land Locators, Inc., a Tennessee corporation in which all of the issued and outstanding shares of stock are owned by Messrs. DeMatteo and Manning, parents of the Company, acquired 19 tracts of real property from Wilmart Associates, Inc. for the total sum of $1,981,000 inclusive of $403,000 of existing mortgages. (See Note 6 to "Notes to Financial Statements," page 26 for a schedule of these mortgages.) The sum of $1,578,000 representing the balance of the purchase price, after deduction of the existing mortgages of $403,000, was paid by International Land Locators, Inc. by its issuance of two promissory notes to Wilmart Associates, Inc., the seller of the property, both notes bearing interest at 4% per annum. The first note in the sum of $250,000 (the payment of which was subsequently assumed by the Company) was payable in January 1972 but payment was, in January 1972, extended to March 1972. The remaining note, provides for ten equal annual installments commencing with April 1973. As collateral security for the payment of these notes Messrs. DeMatteo and Manning pledged all of their capital stock in International Land Locaters, Inc. to Wilmart Associates, Inc. (See "Principal Holders of Stock," page 16 and "Certain Transactions," page 17.) Subsequently and in May 1971, the Company acquired the same 19 parcels of real property from International Land Locators, Inc. Under the terms of the acquisition, the Company issued 218,044 shares of its Common Stock, $.01 par value, to International Land Locators, Inc., assumed the payment of the mortgages of $403,000 and assumed the payment of the note issued by International Land Locators, Inc. to Wilmart Associates, Inc. and due January 1972 (subsequently extended to March 1972) in the face amount of $250,000. Prior to the closing of title in April 1971, the Company paid $3,113 in interest and amortization of mortgages on the property and assumed the payment of accrued interest and real estate taxes for the periods prior to the transfer of title. To the extent of such payments and accruals, the obligations of the Company under the existing mortgages and the note of $250,000 have been reduced. The properties are reflected in the Company's financial statements at the cost of $1,719,551. Accordingly in fixing the purchase price for the parcels of property, the 218,044 shares issued to International Land Locators, Inc. were valued at $1,069,087 (approximately $4.90 per share).

In General

The Company is engaged in the business of acquiring and holding for the purpose of resale and/or development, unimproved real property, both commercial and residential. The properties acquired by the Company are not necessarily adjacent to one another and vary substantially in size. Title to the properties are in the name of the Company and title insurance has been obtained from Tennessee Title Co. of Chattanooga, Tennessee.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

The Company does not intend to construct single or multiple dwellings on its residential property nor does it generally anticipate offering such property in single lots to the public in general. Commercial property will, from time to time, dependent upon occurrences in the immediate vicinity of the property, be either developed, sold or leased to third-party users. From time to time, the Company will review its portfolio of properties and any parcels which, in the opinion of management, are not readily saleable after development, will be sold either privately or at public auction. There is no assurance that the Company will be able to sell such parcels of property, or if sold, that the terms of such sales will be favorable to the Company.

Location and Description of Properties

The land thus far acquired by the Company is almost exclusively confined to the Chattanooga, Tennessee metropolitan area. The Chattanooga metropolitan area as defined by the Bureau of Census includes all of Hamilton County, Tennessee and all of Walker County, Georgia, and comprises approximately 995 square miles located in Southeastern Tennessee on the Tennessee River and Northeastern Georgia. It is part of two physiographic units; the Great Valley of East Tennessee and the Cumberland Plateau.

The population of the Chattanooga metropolitan area is currently estimated to be 293,000 persons. The City of Chattanooga is centrally located within an approximate radius of 145 miles between Nashville, Tennessee; Knoxville, Tennessee; Atlanta, Georgia; and Birmingham, Alabama and is serviced by eight main lines of four railroads. A modern jetport as well as 7 U.S. highways and the canalization of the Tennessee River, as part of the country's inland water systems, makes the area readily accessible. Industry in the Chattanooga metropolitan area is extensive. According to newspaper published statistics Hamilton County (a portion of the Chattanooga metropolitan area), had for the nine years, through 1969, led the State's three other major population counties in the number of new plants and dollar value of industrial developments. Industry is diversified and includes manufacturing of apparel, chemicals, food products, paper products, textiles as well as printing and publishing and fabrication of metals. The Tennessee Valley Authority and three insurance companies maintain their home offices in the area.

No representation is intended that the Company's operation will be confined to the Chattanooga metropolitan area. The Company intends, from time to time, to explore the possibility of acquiring lands outside the area, but at the present time, there are no agreements, commitments or understandings with respect to any such acquisition.

The following sets forth the location, description and intended use of the 19 tracts of property acquired from International Land Locaters, Inc. The proposed use is only the current expression of the opinion of management. Development of real estate is subject to unpredictable changes in the locations of commercial and industrial areas and shifts in population.

Parcel 1: This tract of approximately 14 acres is located on U.S. Highway 11-64 within two miles of Interstate Highway 75 and is within the city limits of Chattanooga, Tennessee. The property, except along the Chickamauga Creek (the natural rear boundary of the property) has been cleared and three unimproved roads provide access to the tract. Presently zoned commercial, the property is suitable for an office complex and shopping center. This parcel is encumbered by a mortgage in the approximate sum of $60,213. In order to accommodate the

full use of the property, four acres will require fill raising the level of the property approximately 3½ feet.

Parcel 2: Approximately 12½ acres located in Eastridge, Tennessee, adjacent to the city limits of Chattanooga on the northwest side of I.S. 75, Highway 41 interchange, the property is partially cleared and a dedicated street (Ringgold Road) provides direct access into the tract from Highway 41. This property is the subject of two mortgages aggregating approximately $132,655. Zoned commerical, the Company anticipates developing the property as a motel complex (see "Application of Proceeds," page 6 and "History and Business—Proposed Development," page 12).

Parcel 3: This property is the subject of three mortgages aggregating approximately $18,269 and is comprised of 170 acres located 3 miles northeast of the Chattanooga city limits on Snowhill Road and Hunter Road in Ooltewah, Tennessee. Presently zoned agricultural, the property has been partially cleared, but the topography is about 35% very rough and hilly. Additionally only limited access to the tract is provided by Mitchell Hill Road. In the opinion of management and in order to avoid the necessity of substantial costs in leveling the property, the parcel is best suited for a mobile home park.

Parcel 4: This tract of approximately 2.7 acres is located at the crossing of U.S. 11-64 and Interstate 75 within the City of Chattanooga. The tract has been cleared and graded and is accessible from U.S. Highway 11-64. Presently zoned agricultural, the property is sutiable for a motel site if commercial zoning can be obtained.

Parcel 4A: Approximately 1.5 acres located directly opposite Tract 4 on Highway 11-64 at the crossing of Interstate 75, this tract has been partially filled, but needs additional filling to utilize the entire tract. Zoned agricultural, the property is suitable for a gas station, provided a zoning variance can be obtained.

Parcel 5: Formerly a farm, this tract of approximately 300 acres is located in Collegedale, Tennessee on Standifer Gap Road, approximately 18 miles from downtown Chattanooga. The property is presently zoned for agriculture, but, subject to a zoning variance, would be best suited for modular or conventional home sites.

Parcel 6: This tract of approximately 20 acres is located on U.S. 11-64 in Ooltewah, Tennessee, approximately 14 miles from downtown Chattanooga. Seven acres fronting U.S. Highway 11-64 are zoned industrial and the remaining 13 acres are zoned agricultural or rural residential. The Property, subject to zoning variances, is best suited for a shopping center. However, in order to make full use of the property, approximately 1½ to 2 acres would require filling to a depth of two to three feet.

Parcel 7: This tract of approximately 40 acres is located on U.S. Highway 11-64 in Ooltewah, Tennessee, directly opposite the Company's Parcel 6. Fronting on Highway U.S. 11-64, the property is bisected by both a Southern Railroad right of way and Little Wolftever Creek. The main line of the Southern Railroad tracks form the southern boundary of the property. Presently zoned industrial, the property is suitable for manufacturing facilities, provided the level of the property along the highway frontage at the northeast corner and in the low areas along the sides of the creek is raised by fill.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

Parcel 8: Located a half mile from the Chattanooga city limits on Jenkins and Shallowford Roads, this tract of approximately 60 acres has been partially cleared and partially graded. The property is presently zoned agricultural, but is suitable for modular or conventional home sites provided that a zoning variance is obtainable. The soil content permits very slow internal drainage and the proposed use of the property would require the installation of sewerage disposal systems.

Parcel 9: Consisting of two tracts totaling 75 acres on either side of Snowhill Road in Ooltewah, Tennessee 20 miles northeast of Chattanooga, this property is zoned agricultural. Adjacent to existing cemetery property, in the opinion of management, the property would be suitable, in part, subject to zoning variances, for a cemetery and the balance for residential home sites.

Parcel 10: This parcel of approximately 63½ acres located on Snowhill Road, 18 miles northeast of downtown Chattanooga was sold in August 1971. For information relative to the terms of such sale, see "History and Business—Recent Developments," page 13.

Parcel 11: This parcel of 16.5 acres is located in Catoosa County, Georgia, two miles south of the Chattanooga city limits on Interstate 75 and the Cloud Springs Road interchange. The property has 1,150 foot frontage on Interstate 75 as well as some frontage on Cloud Springs Road and Scruggs Road. The topography is rolling from a highly elevated ridge top. The property is subject to two mortgages aggregating approximately $34,308 carries no zoning restrictions and in the opinion of management, is best suited for a motel site.

Parcel 12: Located in Rhea County, Tennessee on Watts Bar Lake, this property is not within the Chattanooga metropolitan area. The property fronts on Watts Bar Lake approximately six miles above the Watts Bar Dam. It is approximately 60 miles from Chattanooga, Tennessee. It is accessible on U.S. 27. The road that services the tract ends in a hollow on the tract. An inlet from the lake extends into the hollow and divides the tract into two parcels, one of nine acres and one of 12 acres. The 9-acre tract is moderately to steeply rolling wooded land while the other tract is wooded and moderately rolling. The property is encumbered by a mortgage in the sum $30,338. Zoned residential the company intends to subdivide the property into resort home sites. (See "Application of Proceeds," page 6, and "History and Business—Proposed Development," page 12.)

Parcel 13: This parcel of approximately 30 acres is also without the Chattanooga metropolitan area. Located in Etowah, Tennessee, it is approximately 60 miles equally distant between Chattanooga and Knoxville, Tennessee. While the property is zoned commercial in part and residential in part, it is directly opposite a completed home site sub-division and it is suitable for conventional or modular home sites.

Parcel 14: A 17-acre parcel located on Shallowford Road and Hickory Valley Road, 5 miles from downtown Chattanooga. The property is presently zoned residential and in the opinion of management, should be developed into duplex conventional home sites.

Parcel 15: This parcel of approximately 103 acres is located ¼th of a mile north of Interstate 75 and the U.S. 11-64 Interchange at Ooltewah, Tennessee, approximately 15 miles from downtown Chattanooga. The topography is gently rolling. The land is deep red clay and satisfies

percolation tests permitting septic tanks. The property is zoned residential and agricultural. The property is encumbered by a mortgage in the sum of $27,593. The Company intends to sub-divide the property into conventional or modular home sites. For information concerning such sub-division, see "Application of Proceeds," page 6, and "History and Business--Proposed Development," page 12.

Parcel 16: This commercially zoned property of approximately 12 acres is not located in the Chattanooga metropolitan area, but is 18 miles southeast of Knoxville, Tennessee, two miles from that city's airport. Its best use would be for a shopping center.

Parcel 17: This 39-acre parcel located in Redbank, Tennessee, 4 miles northwest of downtown Chattanooga was sold by the Company. For information relative to the terms of such sale, see "History and Business--Recent Developments," page 13.

Parcel 18: This 44-acre parcel having 1,320 feet of frontage on Waterlevel Highway, U.S. 64, is located in Bradley County, Cleveland, Tennessee, approximately 30 miles from Chattanooga, Tennessee. The property is presently zoned agricultural and, subject to zoning variances, is suitable for conventional modular home sites.

Parcel 19: A 69-acre tract fronting on Ooltewah and Ringgold Roads, 18 miles from downtown Chattanooga, this parcel was sold by the Company. For information relative to the terms of such sale, see "History and Business--Recent Developments," page 13.

Zoning Requirements

Under Tennessee law, zoning variances are subject, in the first instance, to approval or rejection, by the Planning Commission of the County in which the property is located. Rejection by the County Planning Commission can be overruled by the local Town Planning Board or County Council. The Company's management does not believe that it will encounter difficulty in obtaining zoning variances to conform to the anticipated use of its divers properties. However, no assurance can be given that such variances will be granted. The Company's inability to obtain such variances will adversely affect the saleability of the property and will prohibit the development of the property in the manner presently desired. The property owned by the Company in Georgia, under the laws of that state, is not subject to zoning requirements and may be utilized for such purposes as the Company may, in its own discretion, deem appropriate.

Proposed Development

The Company intends to use a portion of the proceeds of this offering to develop certain parcels of its property for sale as conventional or modular home sites. It will sub-divide parcel 12 located in Rhea County on Watts Bar Lake. Approximately $30,000 will be required to provide gravel roads, draw water from an existing well, install water storage tanks and for plat preparation. The Company intends to use outside sub-contractors and engineers in order to accomplish such sub-division, but the Company, through its Vice President, William Manning, will act as the general contractor. The Company anticipates that 50 home sites will be created as a result of the sub-division all of which shall have water frontage and will be offered for sale at prices ranging from $5,000 to $8,000 per home site, dependent upon the location of the

particular parcel. While the Company, generally, does not intend to offer its properties on a single lot basis, it will, with respect to the 50 home sites created at Watts Bar Lake, sell these lots individually. Only limited sub-division of similar recreational property has occurred in the area of the Company's property.

The Company also intends, upon the completion of this offering, to commence the sub-division of parcel 15 located at Ooltewah, Tennessee, approximately 15 miles from Chattanooga. (See "Application of Proceeds," page 6, for the allocation of the proceeds of this offering for such purpose.) The Company intends to install macadam roads, install water lines from city water mains running adjacent to the Company's property, and arrange for plat preparation as part of this subdivision. Similarly, while the Company will act as its own general contractor, it will retain the services of sub-contractors and engineers to perform the actual work required to accomplish such sub-development. Approximately 272 home sites will be developed, each approximating 10,000 square feet in size and will be offered for sale in bulk or multiple lots, only to conventional or modular home builders, at prices ranging from $2,000 to $2,600 per lot, dependent upon the location and size of the lot.

The Company intends to develop 4 acres of the 12½ acres of parcel No. 2 into a 200-room motel, lounge and restaurant. (See "Application of Proceeds," page 6 for the allocation of the proceeds of this offering for such purpose.) The Company's ability to commence such development will be contingent upon the obtaining of $1,600,000 in financing through construction loans and permanent mortgages. As a condition to obtaining such construction loans, the Company may be required to satisfy $132,650 in existing mortgages on the property. While the construction of this motel complex would be supervised by the Company's management, the Company would be required to obtain the services of architects and engineers as well as sub-contractors to perform the actual service. No contracts have been entered into with respect to development of this parcel and the Company does not anticipate that it will take any action until the completion of this offering. This property is located on the northwest side of Interstate 75 and Highway 41 Interchange immediately off the existing exit road of Interstate 75. In the vicinity of the Company's property, there are four nationally-known motels as well as several local chain motel operations. It is the Company's intent to build this motel and either operate it, in which event it would be required to obtain the services of personnel familiar with such type of operation, or to immediately lease the motel to a nationally-known operator.

With respect to the other commercial properties owned by the Company, it is the Company's intention to develop such properties in such manner and for such purposes as may be determined by the Company's management prior to such development. Generally, however, construction and development will be dependent upon leases that will be available to the Company and on the further condition that the Company is able to obtain adequate financing through construction loans and permanent financing. There is no assurance that the Company will be able to obtain such construction loans or permanent mortgages when required. While the Company intends to develop its properties and operate as a landlord, the Company may either re-sell the property, grant land leases or develop and sell the property, once developed.

Recent Developments

On July 9, 1971, the Company entered into a contract with Modern Maid, Inc. to sell parcel

19, a 69-acre tract fronting on Ooltewah and Ringgold Roads in Hamilton County, Tennessee, for $90,000. The contract having been cancelled, the Company entered into a contract on October 7, 1971 to sell this parcel to the Sequoia Land and Development Corp. for $90,000, all sums payable upon closing. The buyer deposited the sum of $5,000 upon the signing of the contract, but the contract is subject to obtaining approval from the Federal Housing Authority and Hamilton County, for 130 lots. It is the obligation of the purchaser under the contract, to seek such approval, but in the event the Federal Housing Authority and/or Hamilton County fails to grant approval, then the contract will be deemed cancelled and the $5,000 deposit refunded to the Sequoia Land and Development Corp. The carrying value of the property to the Company is $47,774.

In December 1971, the Company sold parcel No. 17 consisting of 39 acres located in Red Bank, Tennessee, to Farra Construction Company for the total sum of $85,000. $18,500 was paid upon closing and the balance in two equal annual installments of $33,250 bearing interest at 7% per annum from the date of the closing. The installment payments are secured by a purchase money mortgage upon the property, the first payment to be made on December 9, 1972. The carrying value of the property to the Company was $33,902. The Company was required to pay a broker's commission of 10% to an unaffiliated real estate broker who obtained the purchaser.

On August 13, 1971, the Company sold parcel 10, consisting of approximately 63½ acres 18 miles northeast of downtown Chattanooga, for $45,500. The carrying value of the property to the Company was $38,683. It was required to pay a 10% brokerage commission ($4,550) to an unaffiliated real estate broker.

Employees

The Company has only three full-time employees, two of whom are executive officers of the Company and the third is a secretary. The Company's executives will perform all administrative as well as sales duties. The proposed development of the Company's properties as outlined in "History and Business—Proposed Development" will necessitate the employment of additional personnel by the Company in order to supervise such developments. The Company does not, however, intend to employ engineers or architectural personnel, but will retain the services of such professionals on a sub-contractual basis.

Competition

While there are numerous companies engaged in the field of acquiring, developing, wholesaling and sub-dividing of real estate, management does not believe that competition will be a factor affecting the sales of the Company, but such sales will depend entirely upon the location of the Company's properties and the requirements of the Company's prospective customers.

Offices

The Company's executive offices are located in a one-story dwelling of shingle and brick located on the Company's property at 6503 Slater Road, Chattanooga, Tennessee, where the Company occupies 2,000 square feet of space. In the event the Company develops or sells the property upon which its offices are presently located, the Company may be required to lease office space.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

MANAGEMENT

Directors and Executive Officers

Name	Office
Anthony J. DeMatteo	President, Assistant Treasurer and Chairman of the Board
William L. Manning	Vice President, Assistant Secretary and Director
James Henry	Secretary
Ronald Ullenberg	Treasurer and Director
David L. Boyd	Director
H. T. Braddock	Director
George E. McGee, III	Director
Chalmers K. Smith	Director

Anthony J. DeMatteo, the President, Assistant Treasurer and Chairman of the Board of the Company, devotes his full time and effort to the Company's business and has been with the Company since its inception. From 1966 to July 1968, he was Vice President in charge of Production of Tellico Manufacturing Company. From July 1968 until 1970, he was Vice President, Treasurer and a Director of Continental Strategics Corporation, an apparel manufacturer, and from 1970 to April 1971, he was President and Chairman of the Board of Continental Strategics Corporation.

William L. Manning, the Vice President, Assistant Secretary and a Director of the Company, devotes his full time, attention and efforts to the Company's business and has been with the Company since its inception. From July 1968 through April 1971, he was a Vice President of Continental Strategics Corporation. During the same period, he was a Director of the Tennessee College of Automation and President of Amex Corp., a real estate holding company.

James Henry, Secretary of the Company, has been and still is a practicing lawyer in the State of Tennessee and for more than the last 5 years, has been a partner in the law firm of Henry, McCord, Forrester & Richardson, Tullahoma, Tennessee.

George E. McGee, III, a Director of the Company, has, since May 1, 1966, been the sole proprietor and owner of McGee Co. Realtors, a real estate brokerage firm located in Chattanooga, Tennessee.

H. T. Braddock, a Director of the Company, has been President of Braddock Insurance Agency, Inc. since September 1966.

David L. Boyd, a Director of the Company, has been a partner, since April 1966, in Boyd and Bickell Real Estate Company. Presently, he serves as President of Lakewood Memory Gardens, Lakewood Memory Gardens, West, Greenhills Memory Gardens, Roselawn Memory Gardens and as Secretary of Franklin Memorial Gardens, Hamblen Memory Gardens, Jefferson Memorial Gardens and McMinn Memory Gardens.

Ronald Ullenberg, Treasurer and Director of the Company, has been, since 1967, Vice

President of Forever Yours Ring Co., John Ullenberg, Inc. and State Ring Co. He is also a major stockholder in George Grant Company, Brant's Jewelry Co., of which he is a Director, and DeBeers Diamonds Limited of which he is also a Director.

Chalmers K. Smith, a Director of the Company, has for the past 17 years been President of Ken Smith Auto Parts, Inc. He is also President of Smith Leasing Company.

Remuneration of Directors and Officers

Both Messrs. DeMatteo and Manning each will receive an annual salary of $25,000 for the year ending May 31, 1972. Officers and directors as a group will receive aggregate salaries, for the fiscal year ending May 31, 1972 estimated at $50,000.

Stock Options to Directors

The Company's directors have been granted options in June 1971 to purchase an aggregate of 33,908 shares (4,844 shares each) of the Company's common stock, $.01 par value, at a price of $3.30 per share, the exercise of which options expire in May, 1976. Such options contain anti-dilution clauses.

PRINCIPAL HOLDERS OF STOCK

The following table sets forth, as of January 25, 1972, the class, number and percentage (before and giving effect to this offering) of the voting securities of the Company owned, of record or beneficially, by each person who owns of record, or is known by the Company to own beneficially, more than ten per cent of any class of such securities, as well as by officers and directors as a group.

Name and Address	Title of Class	Type of Ownership	Shares Owned	Approx. percent of Class	Approx. percent of Class assuming the sale of the shares offered hereby
International Land Locators, Inc. . .	Common	Record	218,044	93%	50%
A. J. DeMatteo	Common	Record	2,423	1%	0.5%
		Beneficial (1)	111,445	47%	26%
Wm. L. Manning	Common	Record	2,423	1%	0.5%
		Beneficial (1)	111,445	47%	26%
Officers & Directors as a group	Common	Record (2)	16,956	7%	4%
		Beneficial (1)	235,000	100%	54%

(1) Messrs. DeMatteo and Manning own all of the issued and outstanding capital stock of International Land Locators, Inc. and as a result of such ownership, may be deemed the beneficial owners of the common stock, $.01 par value, of the Company owned by International Land Locators, Inc. The stock of Messrs. DeMatteo and Manning in International Land Locators, Inc. has been pledged, as collateral security, to Wilmart Associates, Inc. (See "History and Business—Organization," page 8, and "Certain Transactions," page 17). A default by International Land Locators, Inc. of its obligations to Wilmart Associates, Inc. could result in a change of control of the Company.

(2) Of the 16,956 shares owned of record by officers and directors, an aggregate of 4,846 shares are owned by Messrs DeMatteo and Manning and the balance of 12,110 shares are held by the Company's other directors, Messrs. Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee and Chalmers K. Smith, equally (2,422 shares each). (See "Management" page 15.)

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

CERTAIN TRANSACTIONS

In April 1971 A. J. DeMatteo and William L. Manning, founders of the Company, entered into a contract with an unaffiliated third party, Wilmart Associates, Inc. to purchase 19 parcels of real property. Subsequently and prior to the closing of title Messrs. DeMatteo and Manning assigned the contract to International Land Locators, Inc. and in consideration received all the issued and outstanding stock of International Land Locators, Inc. Under the terms of the contract International Land Locators, Inc., in payment of the purchase price of $1,981,000 for such parcels of real property, assumed the payment of existing mortgages aggregating $403,000 and issued two promissory notes totaling $1,578,000. The first note in the sum of $250,000 (the payment of which was subsequently assumed by the Company) was payable in January 1972 but payment was in January 1972 extended to March 1972. The remaining note provides for ten equal annual installments commencing with April 1973. Both notes bear interest at 4% per annum. As collateral security for the payment of these notes Messrs. DeMatteo and Manning pledged all of their stock in International Land Locators, Inc. to Wilmart Associates, Inc. Accordingly, and in the event International Land Locators, Inc. should default in its obligations to Wilmart Associates, Inc., a change of control of the Company could occur. See "Principal Holders of Stock"—Note (1), page 16. Subsequently and in May 1971, International Land Locators, Inc. transferred the same parcels of real property to the Company in exchange for 218,044 shares of the Company's common stock $.01 par value, valued by the Company at $1,069,087 ($4.90 per share), and the assumption of the payment of the approximately $403,000 in existing mortgages and the assumption of the payment of the note to Wilmart Associates, Inc. due January 1972 (extended to March 1972) in the sum of $250,000. Approximately $199,870 of the proceeds of this offering will be used to satisfy such note. For further information relative to this transaction, see "History and Business—Organization," page 8.

During April and May, 1971, Messrs. DeMatteo, Manning, Boyd, Braddock, McGee, Ullenberg and Smith each purchased 2,422 shares of the Company's common stock, $.01 par value, at a price of $4.13 per share.

In January 1972, pursuant to shareholder authorization, then then outstanding 194,000 shares of the Company's common stock $.01 par value were exchanged for 235,000 shares of common stock $.01 par value.

OPTIONS TO PURCHASE SECURITIES

Qualified Stock Option Plan

In May 1971, the Company adopted a Qualified Stock Option Plan, under which 20,000 shares of its common stock were reserved for issuance upon exercise of options designated as "qualified stock options" under Section 422 of the Internal Revenue Code as now in effect.

Under the Plan, which is administered by a committee selected by the Board of Directors, key employees, including officers and managerial or supervisory personnel, as well as directors, are eligible to receive options. Employees who own, directly or indirectly, more than 5% of the outstanding shares of common stock, are not eligible to receive options under the Plan. Options may not be granted under the Plan after April 30, 1976, and are exercisable over a period of not more than five years after the date of grant. Each option is exercisable as to one-third of the

shares covered after the expiration of one year following the date of the option is granted, as to two-thirds after the expiration of two years, and in full after the expiration of three years. The exercise price may not be less than the fair market value of the shares on the date the option is granted. If an option granted under the Plan terminates or expires without having been exercised in full, the unpurchased shares subject to that option will be available for further grant under the Plan. Options may not be transferred other than by will or the laws of descent and distribution and, during the lifetime of the optionee, may be exercised only by him. The options terminates three months cessation of employment, whether voluntary or involuntary.

In order to qualify for the tax treatment which Section 421 of the Internal Revenue Code accords to an employee who acquires stock through the exercise of a "qualified stock option," he must make no disposition of such stock within the three-year period beginning on the day after the date on which the stock is issued to him. If the shares are held for such requisite statutory period, the employee, for Federal Income Tax purposes will be entitled to treat any profit realized on disposition of the shares as long-term capital gain, rather than as ordinary income, and the Company will not be entitled to any business expense deduction, for Federal Income Tax purposes, with respect to shares so acquired and disposed of by an optionee.

The Plan contains anti-dilution provisions authorizing appropriate adjustments in the event of certain contingencies, including stock dividends and stock splits.

To date, no options have been granted under the Plan.

Director's Options

In June 1971, the directors of the Company, Messrs. DeMatteo, Manning, Boyd, Braddock, McGee, Ullenberg and Smith, were granted options exercisable for a period of five years to purchase an aggregate of 33,908 shares (4,844 shares each) of the Company's common stock, $.01 par value, at a price of $3.30 per share.

DESCRIPTION OF SECURITIES

The authorized capital stock of the Company consists of 1,000,000 shares of Common stock, par value $.01 per share.

Common Stock

The following description of the common stock does not purport to be complete, and reference is made to the Company's Certificate of Incorporation, as amended, a copy of which is filed as an Exhibit to the Registration Statement of which this Prospectus forms a part.

Dividend Rights. The holders of common stock are entitled to receive dividends when and as declared by the Board of Directors. The Company has no present intention of paying cash dividends on its common stock in the foreseeable future.

Voting Rights. Holders of shares of common stock are entitled to one non-cumulative vote per share on all matters. With respect to the election of directors, this means that the holders of

more than 50% of the shares voting may elect all of the directors of the Company if they choose to do so and, in such event, the holders of the remaining shares will be unable to elect any of the directors.

Liquidation Rights. In the event of liquidation, dissolution or winding up of the affairs of the Company, the holders of common stock shall be entitled to share ratably in all of the assets of the Company available for distribution.

General. Holders of common stock have no pre-emptive or other subscription rights, and there are no redemption or sinking fund provisions applicable thereto. All shares of common stock now outstanding are fully paid and non-assessable and all the shares of common stock which are the subject of this offering, when issued, will be fully paid and non-assessable.

Transfer Agent. The Transfer Agent for the common stock is Continental Stock Transfer Company.

UNDERWRITING

The Company has entered into an agreement (the "Underwriting Agreement") with Monarch Funding Corp. of 79 Wall Street, New York, New York (the "Underwriter"), whereby the Underwriter has agreed to act on a "best efforts all or none" basis as the Company's exclusive agent to sell at $5.00 per share 200,000 shares of the Company's Common Stock. There is no firm commitment on the part of the Underwriter and the Underwriter is under no obligation to purchase or sell the shares offered.

All monies collected from subscribers will be deposited in a special account with the Manufacturers Hanover Trust Company, 40 Wall Street, New York, New York. Unless 200,000 shares are sold within 45 days from the date of commencement of the initial offering herein (or by the end of any extended time, up to an additional 45 days, if the Company and the Underwriter elect to extend the offering time) all monies collected from subscribers will be promptly returned in full and without interest.

The Underwriting Agreement provides that the Underwriter is to receive a commission of 10% of the public offering price ($.50 per share) with respect to the shares for which purchasers are found by them as agent for the Company. In addition, the Company has agreed to indemnify the Underwriter against certain liabilities, including liabilities under the Securities Act of 1933, as amended.

The Underwriter may allow certain dealers a concession of $.40 per share from the public offering price and such dealers may allow to other dealers a discount, not exceeding $.20 per share, with respect to the sale of the shares being offered hereby.

The Underwriting Agreement provides for reciprocal covenants of indemnity against liability in certain instances, including liabilities under the Securities Act of 1933, as amended.

The foregoing sets forth some of the provisions of the Underwriting Agreement, but does not

purport to be a complete statement of the terms contained therein. For more complete details, reference is made to the Underwriting Agreement which is filed as an exhibit to the Registration Statement of which this Prospectus is a part.

LEGAL OPINIONS

Legal matters in connection with this offering are being passed upon for the Company by Schneider & Baratta, Esqs., 1250 Broadway, New York, New York 10001, special counsel to the Company and Henry, McCord, Forrester & Richardson, Tullahoma, Tennessee, General Counsel for the Company, and Edith Cooper, Esq. 163-17 Collins Avenue, Miami Beach, Florida, counsel to the Underwriter. James Henry, a partner in Henry, McCord, Forrester & Richardson, Esqs. is secretary to the Company.

EXPERTS

The financial statements and related schedules and notes included in this Prospectus and elsewhere in the Registration Statement have been examined by Cohen & Brevda, CPAs, independent certified public accountants, whose opinion thereon appears elsewhere in this Prospectus, and have been included herein in reliance upon the opinion of such accounting firm and their authority as experts.

REPORTS TO SHAREHOLDERS

The Company intends to submit to shareholders annual reports containing financial statements certified by independent certified public accountants and such other interim reports as the Directors may deem appropriate. The Company's fiscal year ends June 30.

ADDITIONAL INFORMATION

The Company has filed with the Securities and Exchange Commission, Washington, D.C., a Registration Statement under the Securities Act of 1933, as amended, with respect to the securities offered hereby. For further information with respect to the Company and the securities offered by this Prospectus, reference is made to the Registration Statement and the financial statements and Exhibits filed as part thereof. Statements contained in this Prospectus as to the contents of any contract or other document are not necessarily complete and in each instance reference is hereby made to the copy of such contract or other document filed as an exhibit to the Registration Statement for a full statement of the provisions thereof and each statement in this Prospectus is qualified in all respects by such reference.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Board of Directors
Southeastern Properties, Inc.
Chattanooga, Tennessee 37421

We have examined the Balance Sheet of Southeastern Properties, Inc. as at June 30, 1971, and September 30, 1971, and the related Statement of Cash Receipts and Disbursements for the period from inception to June 30, 1971, and from July 1, 1971, through September 30, 1971. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other audition procedures as we considered necessary in the circumstances.

In our opinion the accompanying Balance Sheet presents fairly the financial position of Southeastern Properties, Inc. at June 30, 1971 and September 30, 1971, the Statement of Cash Receipts and Disbursements presents fairly the cash transactions of the Company for the period from inception (May 1971) to September 30, 1971.

COHEN AND BREVDA
Certified Public Accountants

New York, New York
January 31, 1972

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SOUTHEASTERN PROPERTIES, INC.
BALANCE SHEET
AS AT

	June 30, 1971	September 30, 1971
ASSETS:		
Properties at Cost (Note 2)	$ 1,669,551	$ 1,630,868
Office Building and Land (Notes 2 and 3)	50,000	50,000
Total Properties	$ 1,719,551	$ 1,680,868
DEFERRED CHARGES:		
Security Deposits—Utilities	1,000	1,000
Cost of Registration (Note 4)	13,653	24,840
Mortgage Escrows	346	692
Other Escrows		1,000
Unrecovered Promotional, Exploratory and Development Cost (NOTE 14)	28,300	55,897
Total Deferred Charges	43,299	83,429
Subscriptions Receivable—Capital Stock (Notes 1 and 5)	10,000	------
Exchanges Receivable		3,301
Cash	11	50,760
Total Assets	$ 1,772,861	$ 1,818,358
LIABILITIES AND STOCKHOLDERS' EQUITY:		
Mortgages Payable on Properties (Note 6)	386,207	345,333
Notes Payable—International Land Locaters, Inc. (Notes 1, 2 & 7)	200,080	199,868
Loans Payable—Others (NOTE 13)	------	95,000
Total Mortgages and Notes Payable	586,287	640,201
ACCRUED LIABILITIES:		
Interest on Mortgages (Note 7)	5,721	3,819
Real Estate Taxes, Penalty and Interest (Note 8)	34,509	30,384
Executive Salaries (Note 9)	4,000	------
Other Taxes and Expenses	3,257	4,867
Total Accrued Liabilities	47,487	39,070
Total Liabilities	$ 633,774	$ 679,271
STOCKHOLDERS' EQUITY (Note 1):		
Common Stock ($.01 Par)—Authorized 1,000,000 Shares		
Issued—on Land Purchases 218,044 Shares		
Issued—on Subscriptions 16,956 Shares		
Total 235,000 Shares	2,350	2,350
Capital in Excess of Par		
On Land Purchases	1,066,907	1,066,907
On Subscriptions	69,830	69,830
Total Stockholders' Equity	1,139,087	1,139,087
Total Liabilities and Stockholders' Equity	$ 1,772,861	$ 1,818,358

See Accompanying Notes to Financial Statements.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SOUTHEASTERN PROPERTIES, INC.
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
FOR THE PERIODS SHOWN

RECEIPTS	Inception to June 30, 1971 (a)	July 1, 1971 to September 30, 1971 (b)	
Capital Stock Subscribed	$60,000	$10,000	
Gross Proceeds from Loan		95,000	(Note 1)
Gross Proceeds from Sale of Land		45,500	(Note 2)
Other Receipts—Telephone Refund	200		
Total Receipts	60,200	150,500	
DISBURSEMENTS			
Mortgage Payments on Behalf of International Land Locaters, Inc.—			
Interest and Amortization	3,113	212	
Mortgage Amortization Payments	25,326	40,919	
Mortgage Interest Payments	9,935	7,443	
Real Estate Escrow Payments	171	346	
Cost of Registration	13,349	11,490	
Salaries of Directors and Officers	4,333	17,333	
Materials and Office Supplies	671	1,050	
Security and Escrow Deposit on Loan	1,000	1,000	(Note 1)
Attorneys Fees		953	(Notes 1 & 2)
Commission on Sale of Land		4,550	(Note 2)
Interest on Loans		2,631	
Real Estate Taxes and Penalties		6,929	(Note 1)
Utilities and Telephone	623	1,853	
Recording Deeds	1,144	124	(Note 1)
Payroll Taxes		286	
Other Disbursements:			
Office Salaries		900	
Travel and Sundry	524	1,732	
Total Disbursements	60,189	99,751	
Net Increase in Cash During Period	11	50,749	
Cash and Cash Items Balance at Beginning of Period	—0—	11	
Cash and Cash Items Balance at Close of Period	$ 11	$ 30,760	

a) See accompanying Notes to Financial Statements

b) Specific Notes to above for the period July 1, 1971 to September 30, 1971

Note 1:

The Company effected two loans totaling $95,000 during the three month period ended September 30, 1971. The following disbursements were made relative to these loans, and included above:

Payment of Tax Lien—State of Tennessee	$ 4,162
Interest	2,625
Real Estate Taxes	2,344
Attorney Fees and Deed Registration	753
Escrow Deposit	1,000
Total Disbursements	$ 10,884

The net proceeds from the Loans totaled $84,116.

NOTE 2:

The Company sold a parcel of land (during the three month period ended September 30, 1971) known as the Rogers Property (Property #10 in the Prospectus). The property had a cost to the Company of $38,683 The gross sales price of the property was $45,500. The following disbursements were made by the Company upon closing and is included above:

Commission to Broker	$ 4,550
Attorney Fee and Closing Costs	368
Taxes—Delinquent	310
Taxes—Current	77
Total Disbursements	$ 5,305

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SOUTHEASTERN PROPERTIES, INC.
NOTES TO FINANCIAL STATEMENTS
AS AT JUNE 30, 1971
AND SEPTEBMER 30, 1971

NOTE 1: The Company

a) The Company was incorporated as Modular Homesites of America, Inc. under the laws of the State of Delaware on May 17, 1971 with authorized capitalization of 1,000,000 shares of $.01 per value common stock. In August, 1971, the Company's name was changed to Land Resources Corporation and in November, 1971, to Southeastern Properties, Inc. On May 14, 1971, the Company acquired 19 tracts of real property from International Land Locaters, Inc., a Tennessee corporation by issuance and payment of 218,044 shares of the Company's Common Stock and assumption of mortgages attaching to the property totaling $402,953.00. As additional payment for the acquisition of the real property, the Company assumed the payment of a note of International Land Locaters, Inc. due in January, 1972 in the principal sum of $250,000. (See "History and Business" elsewhere in this prospectus.) All of the issued and outstanding shares of stock of International Land Locaters, Inc. are owned by Messrs. DeMatteo and Manning, Parents of the Company. When the properties were acquired by International Land Locaters, Inc., a promisory note was executed by International Land Locaters, Inc. to the seller, Wilmart Associates, Inc., dated April 1, 1971 in the face amount of $1,328,047., due in ten annual installments, commencing April 1, 1973, with interest at 4%, payable annually with each installment. The interest on this promisory note is less than the market rate of interest for a loan of this type on that date, which was at 7%. The differential in interest, ratably over the ten year period between the 4% rate and the imputed interest at 7% amounts to $258,960. This amount is deducted from the principal balance of $1,328,047., giving a basis of $1,069,087. for the 218,044 shares of the Company's common stock issued to International Land Locaters, Inc. by the Company when it acquired the properties. Of this total value of $1,069,087., the amount of $1,066,907. was transferred to capital in excess of par on land purchases. (See note 2 below.)

b) In addition, the Company issued 2,422 shares of common stock each to six directors which were paid for by the directors at $4.13 per share in April and May 1971. In addition, one director subscribed to 2,422 shares of common stock at $4.13 which were not paid for at June 30, 1971. (It was paid for in July, 1971.) Of the total paid and subscribed ($70,000), the amount of $69,830 was transferred to Capital in excess of par-on subscriptions. (See "Certain Transactions" elsewhere in this prospectus.)

In May, 1971, the directors of the Company were granted options exercisible for a period of five years to purchase an aggregate of 33,908 shares (4,844 shares each) of the Company's common stock $.01 par value at a price of $3.30 per share.

The Company became a de facto corporation in April, 1971 and had transactions on May 1, 1971 and subsequent to that date. In January, 1972, pursuant to shareholder authorization, the issued and outstanding 194,000 shares of common stock, $.01 par value, were exchanged for 235,000 shares of common stock, $.01 par value. The financial statements at June 30 and September 30, 1971 give retroactive effect to this transaction.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SOUTHEASTERN PROPERTIES, INC.

NOTES TO FINANCIAL STATEMENTS (Continued)

AS AT JUNE 30, 1971

AND SEPTEMBER 30, 1971

NOTE 2: Properties At Cost

On May 14, 1971, the Company acquired 19 tracts of real property from International Land Locaters, Inc., and in payment for same, the Company issued 218,044 shares of its common stock, $.01 par value, assumed approximately $403,000 in mortgages payable on said property and assumed the payment of a note in the principal sum of $250,000 to National Bank of North America, due on January 2, 1972 on behalf of International Land Locaters, Inc. at 4% interest, which interest has been paid to January 1972. Title to the properties is now vested in the Company and Tennessee Title Company has insured title. (See "Note 1", above and "History and Business" elsewhere in this prospectus.)

The values applicable to each parcel of real estate is shown in the table below in the column "Original Cost Basis," and is derived by allocating the total cost of the properties of $1,722,040 (See Note 1, above) in the same ratio as the appraisal values of each property. The Agreement dated May 14, 1971, with International Land Locaters, Inc. provided that the Company would pay no more than the $250,000 face of the note no matter what other liabilities may attach to these properties, if any. In April, 1971, the Company made certain payments on the assumed mortgage liabilities in order to avoid default. These principal payments are listed in the table below in the "Cost Adjusted" column. The total amount of this column, ($2,488.98) was charged against (decreasing) the note payable to International Land Locaters, Inc. The net cost of the properties in the following tabulation are the values as per the Balance Sheet at June 30, 1971:

REAL ESTATE INVENTORY

Property No.		Original Cost Basis	Cost Adjustment	Net Cost
1	Scott Property	$ 139,084.00		$ 139,084.00
2	Robison and Hon Property*	515,047.00	$ 413.13	514,633.87
3	Biggers Property	46,941.00	250.84	46,690.16
4	White Property	47,810.00	326.69	47,483.31
5	Knauff Property	130,392.00	714.37	129,677.63
6	Green and Crane Property	21,993.00	131.13	21,861.87
7	Ruth (Trailer Park) Property	41,725.00		41,725.00
8	Noll and Gault Property	65,196.00	443.75	64,752.25
9	Lee Property	39,118.00		39,118.00
10	Rogers Property**	38,683.00		38,683.00
11	Ragel, Lane and Guffy Property	173,856.00		173,856.00
12	Deitzen Property	43,464.00		43,464.00
13	Hampton Property	43,029.00		43,029.00
14	Brookhaven Property	31,294.00		31,294.00
15	Wells Property	130,392.00		130,392.00
16	Maryville Alcon Property	65,196.00		65,196.00
17	Ridgecrest Property	33,902.00		33,902.00
18	Hoskins—Waterlevel Property	66,934		66,934.00
19	Drake, Tate—First Federal Property	47,984.00	209.07	47,774.93
	TOTALS	$ 1,722,040.00	$ 2,488.98	$ 1,719,551.02

*Includes value of $50,000.00 applicable to Office Building and Land now being used by the Company.

**Property sold on August 13, 1871.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SOUTHEASTERN PROPERTIES, INC.
NOTES TO FINANCIAL STATEMENTS (Continued)
AS AT JUNE 30, 1971
AND SEPTEMBER 30, 1971

NOTE 3: Office Building and Land

The Company occupies a house on its property No. 2 which it presently uses as its principal office. Management has received an opinion setting the evaluation on this house at $25,000. An evaluation of the land on which this house is located is $25,000, making the total value of this office property $50,000. This value is shown separately in the Balance Sheet. Since this property is part of parcel No. 2, it is included in the tabulation in Note 2 above and properly footnoted. No depreciation has been provided on the house since it is an intrinsic part of the total property which will be held for investment or sale.

NOTE 4: Cost of Registration

It is the intention of management to capitalize the cost and expenses incurred to date to effect the registration of the Company's stock. The total paid or incurred to June 30, 1971 and to September 30, 1971 is itemized as follows:

	June 30, 1971	September 30, 1971
Traveling by Management, etc.	$ 2,153	$ 7,988
Legal	10,000	10,000
Accounting	1,500	3,000
Printing	—	3,852
Totals	$13,653	$24,840

NOTE 5: Subscriptions Receivable—Capital Stock

At June 30, 1971, one of the Company's directors had subscribed to but not as yet paid for his subscription to the Company's common stock, $.01 par value (2,422 shares at $4.13 per share). This subscription receivable is shown in the Balance Sheet as an asset and is also included in the stockholders' equity. It was paid on July 21, 1971. (See also Note 1 above and "Certain Transactions" elsewhere in this prospectus.)

NOTE 6: Mortgages Payable on Properties

The Mortgages Payable were attached to the properties at date of acquisition by the Company and assumed by the Company. (See Notes 1 and 2 above, and "History and Business" elsewhere in this prospectus.) The table below indicates the mortgage balances payable by the Company at June 30, 1971 and September 30, 1971, scheduled by property number and mortgage payee. These balances were substantially confirmed by the payees. The schedule follows:

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SOUTHEASTERN PROPERTIES, INC
NOTES TO FINANCIAL STATEMENTS (Continued)
AS AT JUNE 30, 1971
AND SEPTEMBER 30, 1971

NOTE 6: Mortgages Payable on Properties (Continued)

MORTGAGES PAYABLE

Property No.	Mortgage Payee	Balance June 30, 1971	Balance September 30, 1971	Interest Rate
1	R.P. Scott, Trustee	$ 63,105.12	$ 60,213.10	6%
2a	Robison	46,845.30	45,155.25	6%
2b	C.O. Hon	87,500.00	87,500.00	6%
3a	A. Biggers (American National Bank)	6,023.04	4,855.18	6%
3b	R.E. Biggers (Hamilton National Bank)	7,715.75	6,172.60	6%
3c	First Federal Bank	7,475.38	7,242.76	6%
4	Thomas W. White	6,609.31	5,939.42	6%
5	Jennie Knauff	7,278.49	5,820.94	6%
6a	Crane (Cleveland National Bank)	4,500.00	4,000.00	6%
6b	Homer Green	994.11	721.91	6%
7a	Elmer Ruth (Trailer Park)	5,135.00	3,420.00	6%
7b	Elmer Ruth (Trailer Park)	1,000.00	1,000.10	6%
8a	Gault	3,937.50	3,150.00	5%
8b	Ida Noll (Jade Winds)	1,686.25	1,242.50	6%
9	Thomas Lee	8,330.05	3,550.05	6%
10	Ross Rogers*	7,219.88	—0—	6%
11a	Lane & Guffy	28,265.51	28,265.51	6%
11b	Ragel	16,014.60	6,043.80	6%
12	Carl Deitzen	33,748.31	30,338.41	6%
15	William Wells	27,593.10	27,593.10	6%
19a	Carl Drake (Maplewood West)	7,770.00	6,660.00	6%
19b	Carl Drake (Maplewood)	1,759.85	1,513.21	6%
19c	D. Tate—First Federal	3,070.44	2,962.86	6%
19d	D. Take (Maplewood West)	2,630.00	1,972.50	6%
	TOTAL	$ 386,206.99	$ 345,333.10	

*Property Sold on August 13, 1971.

NOTE 7: Notes Payable—International Land Locaters, Inc.

The original principal balance of this liability was $250,000 as assumed by the Company on May 14, 1971 and due in January, 1972. (See notes 1 and 2 above and "History and Business" elsewhere in this prospectus.) The agreement dated May 14, 1971 with International Land Locaters, Inc. guaranteed that the Company would pay no more than the $250,000 face value of the note no matter what other liabilities may attach to these properties. In April, 1971 the Company made certain payments on the assumed mortgage liabilities in order to avoid default. (See Note 2, above.) The interest accrual on the assumed mortgage liability at June 30, 1971 and real estate tax accrual at June 30, 1971, also have certain balances which are for periods prior to May 14, 1971, and are therefore payable by the Company and chargeable to the note payable to International Land Locaters, Inc. The deductions from the original note balance of $250,000 reduce the note balance due at June 30, 1971 to $200,080, and at September 30, 1971 to $199,868. The deductions are itemized as follows:

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SOUTHEASTERN PROPERTIES, INC.
NOTES TO FINANCIAL STATEMENTS (Continued)
AS AT JUNE 30, 1971
AND SEPTEMBER 30, 1971

NOTE 7: Notes Payable—International Land Locaters, Inc. (Continued)

LIABILITY BALANCES PRIOR TO MAY 14, 1971

	Inception to June 30, 1971	Inception July 1, 1971 to September 30, 1971
Mortgages Payable and Interest Payments	$13,607	—
Interest accrual at June 30, 1971 for periods prior to May 14, 1971	2,997	212
Real Estate Tax accrual at June 30, 1971 for periods prior to May 14, 1971	33,316	—
Total Deduction	$49,920	212

NOTE 8: Accrued Liabilities—Real Estate Taxes, Penalty and Interest

The real estate taxes, penalty and interest both delinquent and current are accrued as at June 30, 1971 and September 30, 1971. The total accrual on delinquent and current taxes for the period prior to May 14, 1971 amounting to 33,316 is properly chargeable against Note Payable—International Land Locaters, Inc. (See Note 7, above). The balance of the accrual is an expense of the Company.

NOTE 9: Accrued Liabilities—Executive Salaries

The salaries of the two executive officers, Messrs. Anthony J. DeMatteo and William L. Manning, President and Vice President of the Company respectively, have been fixed by the Board of Directors at an annual level of $25,000 each. The accrual of $4,000 in the Balance Sheet represents unpaid gross salary at June 30, 1971. Payroll taxes on these salaries have been accrued.

NOTE 10: Income

The Company has had no earned income on sales of real estate or on commissions and rentals for the period ended June 30, 1971. However, parcel No. 10 (Rogers) of real estate was sold in August, 1971 and the profit of $1,899 was included in that period. (See "Recent Developments" elsewhere in this prospectus.) (See Note 14 below.)

NOTE 11: Repairs and Maintenance

It is Management's policy to expense all items of repairs and maintenance as they are incurred. Any capital improvements to any of the properties will be added to the value of the property.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SOUTHEASTERN PROPERTIES, INC.
NOTES TO FINANCIAL STATEMENTS (Continued)
AS AT JUNE 30, 1971
AND SEPTEMBER 30, 1971

NOTE 12: Stock Options

The Company's directors have been granted options in June 1971 to purchase an aggregate of 33,908 shares (4,844 shares each) of the Company's common stock, $.01 par value, at a price of $3.30 per share, the exercise of which options expire in May, 1976. The exercise of such options may dilute the stock holdings of the public.

Qualified Stock Option Plan

In May 1971, the Company adopted a Qualified Stock Option Plan, under which 20,000 shares of its Common Stock were reserved for issuance upon exercise of options designated as "qualified stock options" under Section 422 of the Internal Revenue Code as now in effect.

Under the Plan, which is administered by a committee selected by the Board of Directors, key employees, including officers and managerial or supervisory personnel, as well as directors, are eligible to receive options. Employees who own, directly or indirectly, more than 5% of the outstanding shares of Common Stock, are not eligible to receive options under the Plan. Options may not be granted under the Plan after April 30, 1976, and are exercisible over a period of not more than five years after the date of grant. Each option is exercisible as to one-third of the shares covered after the expiration of one year following the date of the option is granted, as to two-thirds after the expiration of two years, and in full after the expiration of three years. The exercise price may not be less than the fair market value of the shares on the date the option is granted. If an option granted under the Plan terminates or expires without having been exercised in full, the unpurchased shares subject to that option will be available for further grant under the Plan. Options may not be transferred other than by will or the laws of descent and distribution and, during the lifetime of the optionee, may be exercised only by him. The options terminates three months after cessation of employment, whether voluntary or involuntary.

In order to qualify for the tax treatment which Section 421 of the Internal Revenue Code accords to an employee who acquires stock through the exercise of a "qualified stock option," he must make no disposition of such stock within the three-year period beginning on the day after the date on which the stock is issued to him.

NOTE 13: Loans Payable—Others

A loan was placed by the Company on July 13, 1971 with the Pioneer Bank for $20,000 face amount. This loan was at 7½% interest, and was due on October 11, 1971 and was repaid that date. On September 29, 1971, a loan was placed by the Company with General Service Corporation for $75,000 face amount, with interest at 9¼%, due March 29, 1972. Part of the proceeds of this loan was used to repay the first loan indicated above on October 11, 1971, for $20,000.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SOUTHEASTERN PROPERTIES, INC.
NOTES TO FINANCIAL STATEMENTS (Continued)
AS AT JUNE 30, 1971
AND SEPTEMBER 30, 1971

NOTE 14: Unrecovered Promotional, Exploratory and Development Cost

The Company incurred promotional, exploratory and development costs and expenses from its inception to September 30, 1971, which are of a developmental nature and are thus included as a deferred asset. A complete schedule of these costs and expenses to September 30, 1971 follows:

SOUTHEASTERN PROPERTIES, INC.
SCHEDULE OF UNRECOVERED COSTS
INCEPTION TO SEPTEMBER 30, 1971

Development costs:		
Proceeds of sale of property No. 10 (Rogers)		($45,500.)
Cost of property (per books)	$ 38,683.	
Commission on sale	4,550.	
Closing costs and fees	368.	43,601.
Net gain on sale of property No. 10		($1,899)
Maintenance		62.
Real estate taxes		3,688.
Interest on mortgages		21,582.
Recording deeds		1,268.
Total development costs		$24,701
General administrative expenses:		
Executive salaries	$21,667.	
Office salaries	900.	
Payroll taxes	1,849.	
Utilities	251.	
Travel expenses	1,153.	
Auto expenses	533.	
Office supplies	1,722.	
Telephone	2,033.	
Professional and legal fees	585.	
Bank charges and sundry	503.	
Total general administrative expenses		31,196.
Grand total		$55,897

EXHIBIT A, ANNEXED TO AFFIDAVIT OF WILLIAM L. MANNING

SELLING GROUP

AMHERST SECURITIES (NY) — ~~40,000~~

SMITH JACKSON (NY) ~~30,000~~

GIBRALTAR SECURITIES INC. (NJ) ~~35,000~~

MONARCH FUNDING CORP. (NY) ~~65,000~~ 70,000

INTERROGATORIES TO PLAINTIFF STUART D. WECHSLER FROM HOWARD J. GOLDSTEIN DATED JULY 11, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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You are hereby required to answer under oath the following Interrogatories which are propounded pursuant to Rule 33 of the Federal Rules of Civil Procedure within 30 days after service hereof:

1. State your name and residence address.

2. Set forth your present occupation and the name and address of the company or firm you work for.

3. Set forth the following information in relation to your alleged purchase of stock of SOUTHEASTERN PROPERTIES, INC.:

a. Date of such purchase.

b. In whose name was the purchase made.

c. From whom or what company did you buy the stock.

d. How many shares did you purchase and at what price.

e. When did you sell some of these shares, giving also the exact number sold, the price received and the name of the broker and the name of his company who handled the transaction.

INTERROGATORIES TO PLAINTIFF STUART D. WECHSLER FROM HOWARD J. GOLDSTEIN DATED JULY 11, 1972

4. a. State explicitly what filings were not made in the State of New Jersey and the source of your knowledge.

b. State explicitly whether the Attorney General of the State of New Jersey ever brought any action against SOUTHEASTERN or any of the other Defendants in this case in relation to the Public Offering of SOUTHEASTERN stock, to the best of your knowledge, whether such knowledge is known personally by you or was conveyed to you through other sources; state also the source of such knowledge if your answer is in the affirmative.

5. Set forth with particularity each and every "untrue statement of material facts" and "false and misleading statements" as alleged in Paragraphs "23" and "24" of the amended Complaint.

6. Set forth with particularity what filings Plaintiff alleges were not made with the Attorney General of the State of New York and the source of Plaintiff's knowledge thereof.

7. Annex copies of each and every Order issued by the Attorneys General of either New York or New Jersey which purported to halt trading in the stock of SOUTHEASTERN PROPERTIES, INC. in those states.

INTERROGATORIES TO PLAINTIFF STUART D. WECHSLER FROM HOWARD J. GOLDSTEIN DATED JULY 11, 1972

8. a. State the name of the company stockbroker WILLIAM HYMAN works for.

b. State the date of each and every occasion when you spoke to WILLIAM HYMAN concerning SOUTHEASTERN PROPERTIES, INC. and the substance of each such conversation.

c. Annex copies of any and all correspondence had between yourself and WILLIAM HYMAN with respect to SOUTHEASTERN PROPERTIES, INC.

9. a. Set forth the name of, and the firm for which he works, the "securities broker" mentioned on Page 3 of your Affidavit dated June 16, 1972 which was submitted in opposition to the motion to strike the Complaint.

b. State whether you ever dealt with this securities broker before re the purchase or sale of stock or other securities.

c. Set forth the dates of each conversation you had with this securities broker and the substance of each and every such conversation.

10. State whether Plaintiff ever tried unsuccessfully to buy or sell shares of SOUTHEASTERN PROPERTIES, INC.; if the answer is in the affirmative, set forth the following information:

INTERROGATORIES TO PLAINTIFF STUART D. WECHSLER FROM HOWARD J. GOLDSTEIN DATED JULY 11, 1972

a. The date of such attempt.

b. The number of shares you attempted to sell or buy and whether it was a purchase or sell order.

c. The individual broker and the name of the broker's firm who you used for this transaction.

d. The reason given by the broker for the unsuccessful fulfillment of your order.

e. In what state you attempted to have the order placed and whether you tried in other states.

11. Set forth whether you were ever associated in any way with Defendant MONARCH FUNDING CORP.; if the answer is in the affirmative, give the following information:

a. The starting and cessation dates of such connection.

b. What your position or relationship with MONARCH was in detail, setting forth all of your duties.

c. Whether or not your parting with MONARCH was on a friedly basis; if in the negative, set forth the reason why and under what circumstances your relationship was severed.

12. Set forth whether you had ever heard of SOUTHEASTERN PROPERTIES, INC. prior to your purchasing of

INTERROGATORIES TO PLAINTIFF STUART D. WECHSLER FROM HOWARD J. GOLDSTEIN DATED JULY 11, 1972

stock in the company; if the answer is in the affirmative, set forth the following information:

a. The date and the manner in which you first became acquainted with SOUTHEASTERN PROPERTIES, INC.

b. The names of the individuals who first acquainted you with SOUTHEASTERN PROPERTIES, INC.

c. State with particularity the extent of your knowledge of the company prior to your purchase of shares.

13. Set forth in detail how you came to the conclusions reached in Paragraph "22" of the Complaint, including in your answer the following information:

a. What professional sources you used in reaching these conclusions, i.e., personal knowledge, accountants, lawyers, etc.

b. The name of each such individual whose advice you received as set forth in "a" above and the name of the firm for which that individual works.

c. State specifically and in detail the basis for the conclusions reached in Paragraph "22".

14. Set forth in detail the source of your knowledge concerning your allegation in Paragraph "20" of the amended Complaint, giving the names of your sources of

information and annexing to your answer any and all correspondence or other material which you received, or are in possession of, concerning negotiations between SOUTHEASTERN and APOLLO INDUSTRIES, INC.

15. State whether Plaintiff has any personal knowledge of the allegations set forth in Paragraphs "17", "18", "19", "20", "21", "22", "23" and "24" of the Complaint; if the answer is in the affirmative, state which allegations he has personal knowledge of and how he came to have such knowledge.

Dated: New York, New York
July 11, 1972

s/ HOWARD J. GOLDSTEIN
Attorney for Defendant
SCHNEIDER & BARATTA
1250 Broadway
New York, N. Y. 10001
736-8088

INTERROGATORIES TO PLAINTIFF STUART D. WECHSLER FROM HOWARD J. GOLDSTEIN DATED JULY 11, 1972

To:

Shatzkin and Cooper
Attorneys for Plaintiff
235 East 42nd St.
New York, N. Y. 10017

Hart & Hume, Esqs.
Attorneys for Defendants
James Henry and
Henry, McCord, Forrester & Richardson
10 East 40th St.
New York, N. Y. 10016

Schwartz, Mermelstein, Burns, Lesser
& Jacoby, Esqs.
Attorneys for Defendant
Southeastern Properties, Inc. *et al.*
445 Park Avenue
New York, N. Y.

Kane, Kessler, Preiss, Rand & Proujansky, P.C.
Attorneys for Defendant
Monarch Funding Corp.
60 Wall Street
New York, New York 10005

PLAINTIFF'S ANSWER TO INTERROGATORIES SWORN TO AUGUST 4, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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Plaintiff, for his answer to the Interrogatories of defendant Schneider & Baratta, states:

1. Stuart D. Wechsler, 305 E. 86th Street, New York, N. Y.

2. Attorney: Kass, Goodkind, Wechsler & Gerstein, 122 E. 42nd Street, New York, N. Y.

3. (a) On or about March 13, 1972

(b) Stuart D. Wechsler

(c) Hale Securities, Inc.

(d) 400 shares at $5.00 per share

(e) 100 shares swld on March 24, 1972 at a price of $5.25 per share, through Hale Securities, Inc.

4. (a) Deponent presently has no knowledge or information sufficient to support a belief as to what filings were made in New Jersey.

(b) Plaintiff has no knowledge as to any actions brought by the Attorney General of New Jersey against any defendants.

PLAINTIFF'S ANSWER TO INTERROGATORIES SWORN TO AUGUST 4, 1972

5. The Registration Statement and Prospectus stated the properties of Southeastern were reflected in Southeastern's financial statement at a cost of $1,719,551 and the balance sheet of Southeastern carried as assets real properties at $1,630,868 as of September 30, 1971. In addition, the Registration Statement and Prospectus stated that on the basis of the property valuation of $1,719,551, 218,044 shares of Southeastern's stock issued to International Land Locaters, Inc. for the properties less mortgage and note obligations which were valued at $1,069,087, or approximately $4.90 per share.

6. On information and belief, defendants failed to make those filings required pursuant to Section 352-c and 352-e of the General Business Law.

7. Plaintiff does not have in his possession any copies of the orders requested.

8. (a) Hale Securities, Inc.

(b) Numerous occasions during March, April and May of 1972

(c) No such correspondence exists

9. (a) Vincent Martinelli of F. S. Moseley & Co.

(b) Yes

PLAINTIFF'S ANSWER TO INTERROGATORIES SWORN TO AUGUST 4, 1972

(c) On or about June 12, 1972 I asked Mr. Martinelli whether there was a quotation for Southeastern stock in the pink sheets and if not when it was last quoted. He called me back advising me that the stock was last quoted on May 5, 1972.

10. Yes

(a) On several occasions furing May 1972

(b) I attempted to sell all my shares at various times but on each occasion no sale order was placed since I was informed that there was no trading in these securities.

(c) No transaction occurred

(d) I was told that no market existed in these securities as a result of actions or investigations by the Attorney General of the State of New York.

(e) I attempted to sell these securities in the State of New York, but was told that no market existed for these securities.

11. No

12. Yes

(a) I first became acquainted with Southeastern Properties, Inc. during February or March of 1972 when a copy of the Preliminary Prospectus was mailed to me.

PLAINTIFF'S ANSWER TO INTERROGATORIES SWORN TO AUGUST 4, 1972

(b) William Hyman

(c) The information contained in the Preliminary Prospectus.

13. I relied on counsel for the conclusion reached in ¶27 of the complaint.

14. I was told of the facts concerning this allegation by William Hyman. No correspondence exists regarding this matter.

15. I have no personal knowledge of the facts underlying the allegations of ¶¶17, 18, 19, 20, 22, 23 and 24 of the Amended Complaint. My knowledge as to the allegations of ¶21 derive from my having read the Prospectus of Southeastern Properties, Inc.

Plaintiff objects to the following interrogatories heretofore served on him by the defendant on the 13th day of July, 1972 on the grounds stated:

1. Interrogatory 4(2) to the extent of the source of my knowledge in that such information is privileged and is irrelevant to the issues of this action.

2. Interrogatory 6 to the extent that it requests the source of my knowledge of the filings which were not made with the Attorney General of the State of New York, in that such material is privileged and irrelevant to the issues of this action.

PLAINTIFF'S ANSWER TO INTERROGATORIES SWORN TO AUGUST 4, 1972

3. Interrogatory 9 in that it is irrelevant to the issues of this action.

4. Interrogatories 13(a) and (b) in that such information is privileged and is irrelevant to the issues of this action.

Dated: August 4, 1972

STUART D. WECHSLER

(Verified by Stuart D. Wechsler, August 4, 1972.)

NOTICE OF MOTION FOR CLASS ACTION DATED JULY 31, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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SIRS:

PLEASE TAKE NOTICE that upon the affidavit of Edward Labaton sworn to July 31, 1972, and all prior proceedings herein, the undersigned will move this Court at a motion term thereof to be held in Room 110, United States Courthouse, Foley Square, New York, New York 10007, on August 22nd, 1972, at 10:30 A.M., for an order declaring that the above entitled action be maintained as a class action, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, and for such other and further relief as may be just proper.

Dated: New York, New York
July 31, 1972

Yours, etc.

SHATZKIN AND COOPER
By: EDWARD LABATON
(A Member of the Firm)
Attorneys for Plaintiffs
235 East 42nd Street
New York, New York 10017
Tel.: (212) MU 7-8800

NOTICE OF MOTION FOR CLASS ACTION DATED JULY 31, 1972

To:

Hart & Hume, Esqs.
Attorneys for Defendants
James Henry and
Henry, McCord, Forrester & Richardson
10 East 40th Street
New York, N. Y. 10016

Schwartz, Mermelstein, Burns, Lesser
& Jacoby, Esqs.
Attorneys for Defendant
Southeastern Properties, Inc. *et al.*
445 Park Avenue
New York, N. Y.

Kane, Kessler, Preiss, Rand & Proujansky, P.C.
Attorneys for Defendant
Monarch Funding Corp.
60 Wall Street
New York, New York 10005

and

Howard J. Goldstein, Esq.
Attorney for Defendants
Schneider & Baratta
1250 Broadway
New York, New York 10001

AFFIDAVIT OF EDWARD LABATON IN SUPPORT OF MOTION FOR CLASS ACTION DETERMINATION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

EDWARD LABATON, being duly sworn, deposes and says:

I am a member of the firm of Shatzkin & Cooper, attorneys for the plaintiffs in this action. I submit this affidavit in support of plaintiffs' motion for an order pursuant to Rule 23(c)(1), determining this action to be a class action.*

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*At this point plaintiffs will not enter into an extended discussion of what kind of notice should be sent to members of the class if the Court should determine this to be a class action. It is suggested that if this motion is granted counsel may be able to work out the mechanics of such notice with the approval and assistance of the Court. The question of who should pay for such notice may also become insignificant depending upon how many persons are in the class.

AFFIDAVIT OF EDWARD LABATON IN SUPPORT OF MOTION FOR CLASS ACTION DETERMINATION

Nature of the Action.

The claims asserted herein arise out of the use of a false and misleading prospectus in connection with the public offering of 200,000 shares of common stock of defendant Southeastern Properties, Inc. ("Southeastern") commenced on January 31, 1972. The public offering was underwritten by defendant Monarch Funding Corp. ("Monarch") at a price of $5.00 per share.

In addition to Southeastern and the underwriter, the other defendants were the directors and officers of Southeastern, Southeastern's attorneys, the underwriter's attorneys and Southeastern's special counsel.*

Plaintiff purchased 400 shares of Southeastern stock on or about March 13, 1972, for $5.00 per share, and still retains 300 of said shares.

The class consists of those who purchased Southeastern stock pursuant to Southeastern's prospectus dated January 31, 1972 (the "prospectus") whether such persons

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*A copy of the Complaint is annexed hereto as Exhibit 1.

purchased their shares directly from the underwriters of the public offering or in the open market thereafter, and who have either retained their stock or sold their stock at a loss. Jurisdiction is based upon Section 22(a) of the Securities Act of 1933, Section 27 of the Securities Exchange Act of 1934 and on the principles of pendent jurisdiction. The Complaint alleges violations of Section 11, 12(2) and 17(a) of the Securities Act of 1933 and Sections 10(b) of the Securities Exchange Act of 1934, the rules and regulations of the Securities and Exchange Commission thereunder and Sections 352-c and 352-e of the N. Y. General Business Law.

The prospectus utilized in the Southeastern public offering was materially false and misleading in that:

a) the prospectus failed to disclose pendency of merger negotiations between Southeastern and Apollo Industries, Inc. ("Apollo"). Said negotiations, which commenced prior to filing of the registration statement, were in regard to an acquisition by Apollo of Southeastern. In deciding against a motion made by defendant Schneider & Baratta to dismiss this action, Judge Gurfein stated: "* * * a transaction involving a merger or substantial

acquisition would, on its face, be material since it reasonably might affect the value of the Corporation's stock."

b) the prospectus failed to disclose that the Company had failed to comply with the filing requirements of the States of New York and New Jersey. As a consequence of the failure to make such filing, soon after the public offering and in March, 1972, the Attorney General of the State of New York commenced an investigation of the public offering and the investigation has resulted in a halt in trading of the common stock of Southeastern. The registration statement and prospectus of Southeastern did not disclose that certain filings were required with the Attorneys General of the States of New York and New Jersey, did not disclose that such filings had not been made and did not state that as a result of the defendant's failure to make such filings the securities sold to the plaintiff and to the class he represents are not readily tradeable. According to Judge Gurfein, "A fact which may effect the free marketability of shares is, on its face, material."

c) the assets reflected in the financial statements to the Southeastern prospectus were artificially inflated,

in that the prospectus carried as assets real properties at $1,630,868 as of September 30, 1971 and total assets as $1,719,551. In addition, the prospectus and registration statement stated that, on the basis of the asset valuation of $1,719,551, 218,044 shares of Southeastern stock issued to International Land Locaters, Inc. for the properties, less mortgage and note obligations, were valued at $1,069,087 (or approximately $4.90 per share). These statements were materially false and misleading in that the properties owned by Southeastern were acquired by International in exchange for the assumption of $403,000 in existing mortgages and the issuance of International's corporate note having a principal face amount of approximately $1,328,000 payable over a period of ten years with interest at 4% per annum. International's 4% corporate note had a value substantially less than its principal face amount. In addition, by virtue of the fact that the note issued for the properties had a true value substantially less than its principal face amount, the assets reflected on Southeastern's balance sheet was artificially inflated. Finally, the valuation of shares of stock issued to International in exchange for properties was artificially inflated by virtue of

the inflation of the valuation of the properties on Southeastern's balance sheet.

The Requirements of Rule 23.

Rule 23(a) 1: Although plaintiff at this time is not in a position to state the precise number of purchasers of Southeastern stock damaged during the period January 31, 1972 through March, 1972, it seems evident that "the class is so numerous that joinder of all members is impracticable"* 200,000 shares were sold to the public and during the relevant period there was trading in the stock. Thus, *prima facie*, it would appear that there are at least five hundred members of the class.

Rule 23(a) 2: The registration statement and prospectus pursuant to which the Southeastern stock was sold raises "questions of law or fact common to the class."

Questions of fact common to the class include:

(a) whether the prospectus failed to disclose pendency of merger negotiations between Southeastern and Apollo?

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*Matters in quotes throughout this section refers to actual language in Rule 23.

(b) whether the company failed to comply with the filing requirements of the states of New York and New Jersey?

(c) whether the assets reflected in the Southeastern financial statements were artificially inflated?

(d) whether Southeastern, its directors and officers, its attorneys, the underwriter, the attorneys for the underwriter, or the special counsel to the company, knew, or in the exercise of due diligence should have known, of the misleading character of the registration statement.

Answers to these questions and all other questions concerning the truth of the prospectus should be identical for all members of the class, in that all these misrepresentations and omissions are identical to each member of the class since they come from a common source, the prospectus.

Questions of law common to the class include questions of whether or not defendants violated Sections 11, 12(2) and 17(a) of the Securities Act of 1933, as amended, Sections 10(b) and 27 of the Securities Exchange Act of 1934, as amended, and the Rules and Regulations of the Securities and Exchange Commission promulgated thereunder,

and Sections 352-c and 352-e of the New York General Business Law.

Rule 23(a) 3: Again, as under 23(a) 2 above, the claims of the plaintiff that the registration statement and prospectus were false and misleading is "typical of the claims of the class."

Rule 23(a) 4: The individual plaintiff being in the same position as the other members of the class who were damaged by defendants' actions, will "fairly and adequately protect the interests of the class." Plaintiff's interests are identical to the interest of the members of the class, and are in no way antagonistic to the interest of the absent class members. The Courts have held that among the important elements in determining adequacy of representation is the experience of counsel. I am in charge of this litigation. For more than ten years I have been engaged primarily in the field of securities law and corporate litigation. I have represented plaintiffs and defendants in numerous cases under the securities laws, including class actions in this Court. In addition, I have participated in Practising Law Institute programs on shareholder suits and class actions.

AFFIDAVIT OF EDWARD LABATON IN SUPPORT OF MOTION FOR CLASS ACTION DETERMINATION

Rule 23(b) 3: This action would appear to be a classic example of the kind of situation for which the class action was designed. There can be no doubt that in actions involving a public offering with over five hundred potential plaintiffs, all damaged in the same manner by the acts of defendants, "a class action is superior to other available methods for a fair and efficient adjudication of the controversy." Here, where the acts complained of are specific and affect all of the class members equally, "the questions of law or fact common to the members of the class predominate over any other questions", such as amount of damages, "affecting only individual members."

Members of the class have not expressed "an interest * * * in individually controlling the prosecution * * * of separate actions." Plaintiff's counsel knows of no other actions concerning the controversy herein commenced to date by members of the class on an individual basis. Therefore, "litigation concerning the controversy already commenced" presents no impediment to declaring this action a class action.

There are no extreme or unusual "difficulties likely to be encountered in the management" of this class action

since, again, the common questions of law and fact extend to all of the members of the class. Moreover, the problems presented in the conduct of this class litigation are no different from the problems presented in the innumerable other securities actions determined to be proper class actions in the recent past.

Conclusion.

An action on a prospectus alleged to be false and misleading is the kind of action provided for in Rule 23.

The motion for class action determination should be granted.

(Sworn to by Edward Labaton, July 31, 1972.)

AFFIDAVIT OF ARNOLD I. BURNS IN OPPOSITION TO CLASS ACTION MOTION SWORN TO OCTOBER 10, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

ARNOLD I. BURNS, being duly sworn, deposes and says:

1. I am a member of the firm of Schwartz, Mermelstein, Burns, Lesser & Jacoby, attorneys for defendants Southeastern Properties, Inc., Anthony J. DeMatteo, William L. Manning, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III and Chalmers K. Smith and make this affidavit in opposition to plaintiff's motion that the within action be maintained as a class action pursuant to Federal Rule 23.

2. Defendant Southeastern Properties, Inc. ("Southeastern" or the "Company"), pursuant to a prospectus effective January 31, 1972, offered 200,000 shares of its stock to the public. After trading of the stock commenced in mid-March of 1972, the Attorney General of the State of New York took steps to prohibit further trading

because of alleged irregularities in Southeastern's New York Blue Sky filing.

3. Shortly thereafter, the plaintiff herein commenced the instant class action claiming violation of the 1933 and 1934 Securities Acts because of the failure of the prospectus (a) to recite allegedly improper Blue Sky filings with the States of New York and New Jersey; (b) to refer to alleged pre-merger contacts with a firm known as Apollo Industries, Inc.; and (c) to correctly value a certain promissory note which was used to pay for those land parcels purchased by Southeastern, which parcels represent the business assets of the Company.

4. The officers and directors of Southeastern have, since April of 1972, considered all possible alternatives in an attempt to remove the cloud from the public offering which was created by the action of the Attorney General. After frequent and lengthy discussions between this office and the office of the Attorney General, and finding no easy solution to the problem, the Board of Directors of Southeastern instructed the officers of the Company to take those steps necessary to effect an offer of rescission, thereby making the shareholders of Southeastern whole. A letter, dated August 14, 1972, to this

effect informing the Company's shareholders of this decision is annexed hereto as Exhibit "A". The attorneys for plaintiff herein were sent a copy of this letter on August 28, 1972. This office has several times asked plaintiff's attorneys to adjourn any further proceedings herein until such time as the Company has an opportunity to effect the offer of rescission. They nonetheless insist on pressing this motion and proceeding with discovery in a case which may soon be rendered moot, thereby forcing the Company to incur additional expenses and diverting it from proceeding with a program of rescission.

5. Based on the projected cash flow of the Company, and executed contracts of sale for four of the land holdings of Southeastern (a closing was held on one of these parcels in late September, wherein the sales price was $70,000), the officers of Southeastern now project that the Company will have sufficient funds to effect an offer of complete rescission by January of 1973. Although these contracts are subject to some contingencies, such as zoning approvals for the purchaser's intended project, I am informed that the prospective buyers have invested in excess of $20,000 in non-refundable down payments for,

and engineering studies of, the land. It is the opinion of management that these sales will all proceed to closing.

6. Accordingly, the officers of Southeastern seem to be moving in the direction of making all the shareholders whole for any damages they have suffered because of the confusion over this offering. Since this action would be rendered moot by the making of a rescission offer, the granting of the instant motion would appear to be premature at this time. Also, a present determination that this action may be maintained and continue as a class action would require the Company to proceed with expensive and time consuming discovery and notice requirements to members of the class which would interfere with the efforts of the officers of the Company and its attorneys toward making the shareholders whole. By pressing this motion and discovery in this suit at this time, plaintiff's attorneys delay the very relief sought in the complaint, force the Company to incur unnecessary legal expenses, and work against the best interests of the shareholders involved.

7. The Attorney General of the State of New York has obtained an order pursuant to Article 23-A of the

AFFIDAVIT OF ARNOLD I. BURNS IN OPPOSITION TO CLASS ACTION MOTION SWORN TO OCTOBER 10, 1972

New York General Business Law (The Martin Act) which, on its face, can be construed to bar the Company from going forward with an offer of rescission. A copy of that order is annexed hereto as Exhibit B. This office will shortly move to have so much of this order as affects and interferes with the Company's internal affairs stricken on the ground that such Order was obtained in violation of the express provisions of the Martin Act, the CPLR, and the United States Constitution. Counsel sees no further barriers to an offer of rescission if Southeastern continues to be successful in its efforts at selling its properties.

8. Furthermore, the simultaneous maintenance of the instant action by this plaintiff and of a proceeding by the Attorney General involving substantially the same issues, will, of necessity, harass the Company and expose all parties concerned to the risk of impossible conflict between state and federal processes. It is therefore suggested that this private civil action should be stayed until conclusion of any Martin Act proceedings, the outcome of which may preempt the further prosecution of this action.

AFFIDAVIT OF ARNOLD I. BURNS IN OPPOSITION TO CLASS ACTION MOTION SWORN TO OCTOBER 10, 1972

WHEREFORE, the aforementioned defendants respectfully request that this Court deny the plaintiff's class action motion without prejudice, granting plaintiff leave to renew said motion in the event satisfactory progress toward a rescission offer is not made by January 31, 1973. In addition, defendants request that an order be entered herein staying all proceedings in this action on the part of this plaintiff until such time as any proceeding by the Attorney General under the Martin Act has been concluded.

(Sworn to by Arnold I. Burns, October 10, 1972.)

EXHIBIT A, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
LETTER DATED AUGUST 14, 1972.

Southeastern Properties, Inc.

August 14, 1972

TO: Shareholders of Southeastern Properties, Inc.

Dear Shareholders:

Reference is made to our letter to shareholders dated June 22, 1972. Since then, the Board of Directors has continued to consider the various courses of action set forth therein and has considered and examined in detail several specific alternatives including travel to and local inspection, market analysis and background investigation of the principals involved. After thorough deliberation, the Company's Board of Directors concluded that it would be in the best interest of all concerned to give each shareholder the opportunity to rescind his purchase of shares and to receive $5.00 for each share tendered back to the Company. Accordingly, it has, with advice of counsel, adopted a resolution (1) To take all appropriate measures to effect an offer which would entitle shareholders who purchased their shares pursuant to the recent public offering to rescind their purchases; (2) To sell company properties, in an orderly and deliberate fashion in order to provide funds necessary to permit such an offer; (3) To formulate a suitable procedure and schedule for effecting such an offer on the best terms practicable and; (4) To take appropriate steps to obtain clearance from regulatory agencies having jurisdiction.

As earlier reported, the Company's properties, as described in the prospectus, are intact and, while no assurances can be given, it is management's present anticipation that sufficient revenue can be generated from the sell of properties to make such a rescission and its consummation feasible. We will keep you posted and will communicate with you again as soon as a definitive program is formulated.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

To keep you current, please be advised that: (1) The closing originally scheduled for July 7, 1972, on Parcel 19 did not take place by reason of the purchaser's failure to obtain FHA approval with respect to his intended use, a condition to the closing. While neither party is bound to close by reason of the failure of the condition, the purchaser is having the property resurveyed to meet FHA requirements and has expressed an interest in consummating the transaction on the original terms as FHA approval is forthcoming; (2) The offer of $300,000.00 for 4 acres previously reported to you was contingent upon zoning, permits, and clear title. As of this date, all of the prerequisites have been accomplished, except the closing of a right-of-way on which clearance is expected; (3) The Company has received a preliminary offer in writing, accompanied by a $5,000.00 earnest money check for the purchase of an additional four acres in Parcel 2 at $62,500.00 per acre provided that a right-of-way is preserved as an entrance to the tract. The Company intends to enter into a definitive agreement with respect to this tract.

We will continue to keep you apprised.

Thank you for your continued patience, understanding, and cooperation.

Yours very truly,

SOUTHEASTERN PROPERTIES, INC.

A. J. DeMatteo, President

EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
ORDER OF DiFEDE, J., DATED SEPTEMBER 12, 1972.

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House thereof, on the day of , 1972.

PRESENT:

HON. JOSEPH DiFEDE, Justice.

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IN THE MATTER

of

An Inquiry by the Attorney General of the State of New York, pursuant to Article 23-A of the General Business Law of the State of New York, in regard to the practices of: SOUTHEASTERN PROPERTIES, Inc., MONARCH FUNDING CORP., WILLIAM V. HELD, ANTHONY J. DEMATTEO, WILLIAM L. MANNING, LEO EISENBERG, And Others, in the issuance, sale, promotion, negotiation, advertisement and distribution of securities within and from the State of New York.

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EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD L. BURNS

Upon the annexed affidavit of THOMAS N. DOLAN, Assistant Attorney General of the State of New York, duly sworn to the 7th day of Sept., 1972, from which it appears to our satisfaction that the Attorney General of the State of New York is about to commence an action against SOUTHEASTERN PROPERTIES, INC., MONARCH FUNDING CORP., WILLIAM V. HELD, ANTHONY J. DE MATTEO, WILLIAM L. MANNING and LEO EISENBERG AND OTHERS, pursuant to Article 23-A of the General Business Law of the State of New York and the evidence of the said SOUTHEASTERN PROPERTIES, INC., MONARCH FUNDING CORP., LEO EISENBERG, ANTHONY J. DE MATTEO, WILLIAM L. MANNING, WILMART ASSOCIATES, INC., JOHN ZEEMAN, IRWIN SCHNEIDER and EDITH COOPER is material and necessary to the investigation being conducted herein by the Attorney General and for use upon the trial of the action to be commenced and the interests of the public requiring the same;

NOW, on motion of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, it is

ORDERED that the above named SOUTHEASTERN PROPERTIES, INC., MONARCH FUNDING CORP., LEO EISENBERG, ANTHONY J. DE MATTEO, WILLIAM L. MANNING, WILMART ASSOCIATES, INC., JOHN ZEEMAN, IRWIN SCHNEIDER and EDITH COOPER appear

EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

before one of the Justices of this Court, at a Special Term, Part II thereof, on the 13th day of October, 1972 at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, and at such other times to which said examination may be adjourned, to be examined and answer such questions as may be put to them or any of them, and to produce such papers, books, documents, records and data concerning the alleged fraudulent practices relating to the action which the Attorney General has determined to bring, including any and all general ledgers, minute books, stock certificate books, stock ledger books, cash books, check books, cancelled checks, bank statements, journals, accountant's work papers, records, documents and data relating to the offer, sale, negotiation, distribution and transfer of stocks, bonds, investment certificates, evidences of interest, certificates of indebtedness and other securities of SOUTHEASTERN PROPERTIES, INC., by any of the persons or firms mentioned in the caption of this action, since on or about the 1st day of January, 1972; and it is further

ORDERED that in the meantime and pending further order of this Court, the aforesaid SOUTHEASTERN PROPERTIES, INC., MONARCH FUNDING CORP., LEO EISENBERG, WILLIAM V. HELD, ANTHONY J. DE MATTEO and WILLIAM L. MANNING, are

hereby barred and restrained from offering, selling and transferring the securities of SOUTHEASTERN PROPERTIES, INC., to the public within or from the State of New York as principals or agents directly or indirectly; and it is further

ORDERED that in the meantime and pending further order of this Court, all persons in possession, custody or control of securities of SOUTHEASTERN PROPERTIES, INC., who are exercising such possession, custody or control of such stock for or on behalf of the aforesaid SOUTHEASTERN PROPERTIES, INC., MONARCH FUNDING CORP., LEO EISENBERG, WILLIAM V. HELD, ANTHONY J. DE MATTEO, and WILLIAM L. MANNING, or into whose possession, custody, or control of such securities may come, are barred and restrained from in any wise disposing of, transferring or trading such securities in any manner whatever, pending a further order of this Court; and it is further

ORDERED that SOUTHEASTERN PROPERTIES, INC., MONARCH FUNDING CORP., WILLIAM V. HELD, ANTHONY J. DE MATTEO and WILLIAM L. MANNING and LEO EISENBERG and all other persons acting in aid or assistance of them be and they are hereby enjoined and restrained until further order of this court from transferring or disposing of any proceeds

derived from the sale of the unregistered securities of SOUTHEASTERN PROPERTIES, INC., in their possession or under their control, or funds with which such proceeds have been commingled.

ORDERED that service of a copy of this order be made upon SOUTHEASTERN PROPERTIES, INC., WILLIAM V. HELD, ANTHONY J. DE MATTEO, WILLIAM L. MANNING, WILMART ASSOCIATES, INC., and EDITH COOPER by personally serving a copy of this order upon the Secretary of State or his Deputy in Albany, New York under § 352-b of the General Business Law of the State of New York together with copies of the papers upon which it was granted and by mailing a notice of such service and a copy of this order together with said papers registered or certified with return receipt requested to the last address known to the Attorney General of said persons.

Service by such process shall be complete on receipt by the Attorney General of a return receipt purporting to be signed by the addressee or a person qualified to receive his or its registered or certified mail in accordance with the rules and customs of the Post Office Department or, if acceptance was refused by the addressee or his or its agents, on return to the Attorney General

EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

of the original envelope bearing a notation by the postal authorities that receipt thereof was refused. Such service on or before the 2nd day of October, 1972 shall be deemed sufficient; and it is further

ORDERED that service of a copy of this order and papers upon which it was granted may also be made personally upon SOUTHEASTERN PROPERTIES, INC., MONARCH FUNDING CORP., LEO EISENBERG, WILLIAM V. HELD, ANTHONY J. DE MATTEO, WILLIAM L. MANNING, JOHN ZEEMAN, WILMART ASSOCIATES, INC., IRWIN SCHNEIDER and EDITH COOPER with the State of New York such service on or before the 2nd day of October, 1972 shall be deemed sufficient service.

ENTER

s/ JOSEPH DiFEDE
Justice of the Supreme Court of
the State of New York

Filed 9/12/72 N. Y. County Clerk's Office

EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
AFFIDAVIT OF THOMAS N. DOLAN.

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

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EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

Financing in the Department of Law at 80 Centre Street, New York, New York. In the course of such employment I have been put in charge of the above investigation. Based upon information which has come to the attention of the Attorney General of this State, sworn testimony, documents and records accumulated by the Department of Law of this State as well as reports furnished by members of the staff of the Department of Law, I make the following statements upon information and belief.

This affidavit is submitted in support of an application for the issuance of an order pursuant to Section 354 of the General Business Law of the State of New York calling for the examination of witnesses, the production of records and the stay of securities transactions all involving the securities of SOUTHEASTERN PROPERTIES, INC. The Attorney General has determined to commence an action under Article 23-A of the General Business Law to bar and enjoin permanently from the securities business within and from this state SOUTHEASTERN PROPERTIES, INC., MONARCH FUNDING CORP., WILLIAM V. HELD, ANTHONY J. DE MATTEO, WILLIAM L. MANNING AND OTHERS.

This matter involves our investigation into the sale of one million dollars worth of the securities of

EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

SOUTHEASTERN PROPERTIES, INC. (hereinafter referred to as SOUTHEASTERN) by MONARCH FUNDING CORP., a New York based underwriter during early 1972. Our probe thus far has led to the following preliminary conclusions concerning this offering:

1. The sale of SOUTHEASTERN stock was made without filing as required by Article 23-A of the General Business Law and contrary to an express representation to that effect in the prospectus used in the offering.

2. The prospectus which was filed with the Securities and Exchange Commission did not disclose the fact that merger negotiations and activities were in process with Apollo Industries, Inc., a company listed on the American Stock Exchange, during the course of the underwriting.

3. In effect this offering was an attempted offering of Apollo Industries concerning which no information was provided to investors.

4. The prospectus failed to disclose that one WILLIAM V. HELD (hereinafter referred to as HELD) was a principal and promoter of this offering. It is believed that HELD's connection with the company was masked to avoid disclosing possible unfavorable information in his

background and to thwart the Internal Revenue Service from levying on properties and assets belonging to him.

5. The prospectus indicates that SOUTHEASTERN acquired all 19 parcels of land from International Land Locators, Inc. in May of 1971. However, our investigation to date indicates that at least one parcel of this property was never recorded as being in the company's name. The examination sought herein would seek to ascertain the reason for this discrepancy and whether other parcels of land are similarly not transferred to SOUTHEASTERN.

6. The fact that the promoters of this company were less than candid concerning these aspects of the company can only lead to the further conclusion that other material facts may be distorted or untrue.

A. The Unregistered Offering

On approximately March 22, 1972 our office was apprised that there had been an underwriting of SOUTHEASTERN, a Chattanooga, Tennessee based land company. This offering was for 200,000 shares at an offering price of $5.00 per share. The underwriter for this issue was a New York Broker-Dealer by the name of MONARCH FUNDING CORP., located at 79 Wall Street, New York, New York.

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LEO EISENBERG is the President of MONARCH FUNDING CORP. Special Counsel for the issuing corporation for the purpose of this offering was Schneider and Baratta, Esqs., 1250 Broadway, New York, New York 10001 and general counsel for the corporation was the firm of Henry, McCord, Forrester and Richardson of Tullahoma, Tennessee. Counsel for the underwriter, MONARCH FUNDING CORP., was Edith Cooper, Esq., of Miami Beach, Florida, a sister of HELD.

The issue was offered by the underwriter on a best efforts, all or none basis. The entire issue was sold and $1,000,000 was realized from the underwriting. Contrary to the legend that appeared on the cover page of the prospectus (attached hereto and marked Exhibit "A") this offering had not been duly filed or registered with the Department of Law of the State of New York as required by Article 23-A of the General Business Law.

As of March 22, 1972 a notice was sent by the New York State Attorney General's Office to SOUTHEASTERN and MONARCH FUNDING CORP., requesting that they should make immediate restitution of all monies obtained from the securities offering of SOUTHEASTERN. To this date such restitution has not been made.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

The public stock offering was completed, closed and funds distributed on March 17, 1972. SOUTHEASTERN PROPERTIES, INC., at the closing received $900,000 ($100,000 being retained by the underwriter, MONARCH FUNDING CORP. for underwriting commissions). As of March 23, 1972 SOUTHEASTERN had spent approximately $294,000. Of this $294,000, $201,870 was paid to WILMART ASSOCIATES, INC., in payment of the first note given by International Land Locators and assumed by SOUTHEASTERN as part payment on the original purchase of the 19 parcels and $32,137.20 was paid to Schneider and Barrata, special counsel for the company. Additional payments or disbursements made through April 7, 1972 left a balance of the proceeds from the offering in the amount of $590,909.20 which was being held in two separate bank accounts in Chattanooga, Tennessee.

It was, of course, the purpose of Section 352-e of the General Business Law for the public to be afforded some medium of protection from unscrupulous promoters by imposing the scrutiny of the Attorney General's Office upon real estate security promotions. Such protection was completely thwarted by the failure to register this offering and the elements of possible fraudulent and

misleading material which are described in greater detail below would have come to the attention of the Attorney General and the public before $1,000,000 of the public's monies were given over to the promoters herein.

B. Merger with Apollo

Our investigation has thus far revealed that before the completion of the underwriting and while shares of SOUTHEASTERN were being sold to the public, Apollo Industries, Inc. an American Stock Exchange listed firm, through its president John Zeeman was investigating the possibility of merging with SOUTHEASTERN. Indeed, on or before March 14, 1972 a representative Apollo Industries Inc. was examining the properties of SOUTHEASTERN in Tennessee. It is part of our inquiry to determine whether or not the offering of SOUTHEASTERN stock was but a means of raising monies for Apollo. The testimony and evidence thus far is replete with incredible and contradictory statements. For instance ANTHONY DE MATTEO, the president of SOUTHEASTERN, testified on April 19, 1972, that he first met John Zeeman president of Apollo Industries at a due diligence meeting for the SOUTHEASTERN underwriting in mid-February, 1972. He stated that he did not know who or how Zeeman was invited to the meeting.

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It is inexcusable for the president of an issuer to admit that he was unaware of how or who invited Apollo's president to such an intimate meeting as this ordinarily would be. It is incredible unless, of course, MR. DE MATTEO is less than familiar with the operations of his company and that actually someone else was in real charge of the financial dealings of SOUTHEASTERN.

John Zeeman has provided this office with copies of reports dated March 14, 1972 from E. H. Wolf, a representative of his company. (See Exhibit "B" attached.) Apparently soon after the due diligence meeting Apollo's men were inspecting SOUTHEASTERN properties. Zeeman had asked DE MATTEO about merging at the due diligence meeting. This proposed merger and the fact that representatives of Apollo Industries and its principals were examining the properties of SOUTHEASTERN in turn was not disclosed in the prospectus as accepted by the Securities and Exchange Commission. It is, of course, axiomatic that such a factor as the immediate prospect of a merger into a listed company should be disclosed in any offering literature.

A further confusing note is the existence or non-existence of the "finder" of Apollo, Stephen Weil of 330 West 58th Street. He has provided this office with a

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copy of an agreement dated April 7, 1972 which purported to enclose a prospectus of SOUTHEASTERN and indicates that Zeeman agreed to pay him a 5% commission for "finding" SOUTHEASTERN. However, Zeeman had already found SOUTHEASTERN by April 7, 1972. This office seeks now to examine John Zeeman under oath to pinpoint the exact relationship of Apollo and SOUTHEASTERN and to determine whether or not there was an arrangement between the two and whether the public was mislead by not being informed of the merger negotiations.

Apparently during the course of the sale of the stock some purchasers were told of the merger while others were not. Nothing, however, was in the prospectus. John Zeeman, incidentally is the subject of an SEC order barring him from association with broker-dealers. Such order resulted from his activities as president of National Home Products, Inc. by his alleged willful violation of the federal securities laws. However, shortly after the underwriting was closed, Zeeman, HELD, and a New York broker-dealer did discuss the feasibility of a merger between his company and SOUTHEASTERN and this broker was told of a possible merger by SOUTHEASTERN during the underwriting.

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C. Undisclosed Principal

It would appear that HELD is in fact the mystery man behind this promotion and is believed to be an undisclosed principal. Preliminary investigation reveals the acquisition of SOUTHEASTERN properties were not at arms length and that former employees of HELD were established as the principals of SOUTHEASTERN to cover up his true connection with the company.

Our investigation discloses that the land owned by SOUTHEASTERN was originally owned by WILMART ASSOCIATES, INC., a corporation owned and controlled by HELD.

Our investigation reveals that in April of 1971 International Land Locators Inc., a Tennessee corporation in which all of the issued and outstanding shares of stock are owned by ANTHONY J. DE MATTEO and WILLIAM L. MANNING, allegedly purchased 19 tracts of real property from WILMART ASSOCIATES for the sum of $1,981,000 inclusive of $403,000 in existing mortgages. No cash was exchanged for the property. Instead two notes bearing interest at 4% were given to the seller, WILMART ASSOCIATES, INC., in payment of said land. The first note, in the sum of $250,000, was due and payable in January of 1972, but payment was extended until March of 1972. The second

note provided for ten equal annual installments to commence April of 1973. As collateral security for payment of the notes, Messrs. DE MATTEO and MANNING pledged all of the stock in International Land Locaters, Inc. to WILMART ASSOCIATES INC.

Then in May of 1971, according to the prospectus, the same 19 parcels of real property were acquired by SOUTHEASTERN, a company in which ANTHONY J. DE MATTEO was president, assistant treasurer and chairman of the board and WILLIAM L. MANNING was vice-president, assistant secretary and director, from International Land Locaters, Inc. Under the terms of the acquisition SOUTHEASTERN issued 218,004 shares of its common stock to International Land Locators, Inc. and assumed payment of mortgages on the properties and assumed payment of the note to WILMART ASSOCIATES INC., which was due, as extended, in March of 1972.

It should be noted that in the event the second note given in payment for the land now owned by SOUTHEASTERN should be in default, WILMART ASSOCIATES INC., the corporation controlled by HELD would in fact reacquire controlling interest in SOUTHEASTERN.

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The prospectus failed to fully disclose the manner in which it obtained the property from WILMART ASSOCIATES INC. It would further appear that this was certainly not an arms length transaction. WILMART ASSOCIATES INC., was controlled and dominated by HELD. MR. DE MATTEO and MR. MANNING who are the alleged parents of SOUTHEASTERN were both former employees of HELD. DE MATTEO had been vice-president and later president of Continental Strategics Corporation which was a group of textile plants located primarily in Tennessee. Continental Strategics Corporation was owned and controlled by HELD. MANNING also was a vice-president at Continental Strategics, Inc., during this same period. Continental Strategics, originally a Tennessee corporation, subsequently merged with Solite Products Corporation in approximately December of 1968. Solite Products Corporation at the time was a publicly held corporation. After the merger the name of the corporation was changed from Solite Corporation to Continental Strategics Corporation. Some time subsequent to the name change, the new Continental Strategics Corporation sold the assets of the Solite Products Corporation back to the original owners. On or about April of 1970 Continental Strategics Corporation was merged with

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Chadbourn Inc., a NYSE listed corporation. Mr. Irwin Schneider of the firm of Schneider and Barrata represented Continental Strategics Corporation and HELD in the Solite and Chadbourn mergers. As a result of the acquisition by Chadbourn, it is reported that HELD received approximately $1,200,000.00 which money was deposited to his account in a German bank in German marks.

Although requests have been made of HELD's attorney and through attorneys for SOUTHEASTERN, HELD has declined to appear and is apparently avoiding service of subpoena for his presence. Investigation thus far by the office of the Attorney General reveals that HELD was born in Brooklyn, New York and migrated to Miami, Florida, some years ago. At least since the 1960's he appears to have been a resident of the State of Tennessee owning or operating several textile or apparel mills in that state. He is described as being 51 years of age, about 5' 8" with a heavy build. It was ascertained that although HELD appears to have a permanent residence in Chattanooga, Tennessee, having a wife and children residing in that state, investigators attempting to serve a subpoena upon HELD at a residence address located in the County of New York at 150 East 77th Street, ascertained that the subject

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has paid for two apartments at that address and apparently resides or resided in one of them while Gail Rappaport, described by a witness in this investigation as his girl friend, resided in the other. HELD in 1969 and 1970 was the subject of an intensive investigation by the Internal Revenue Service in Tennessee at which time it was alleged that he controlled some 16 corporations with scores of bank accounts located all over the country. In that proceeding, which the Attorney General believes to still be pending, HELD tried unsuccessfully to quash subpoenas served upon him as an officer and director of such corporations. Included among such corporations was WILMART ASSOCIATES, INC.

In the course of our investigation it became known that the Bank of North America was privy to certain transactions of HELD and some of his allied corporations and were in possession of records pertaining to HELD and his corporations, including SOUTHEASTERN. Indeed, the National Bank of North America is described in the prospectus referred to previously of SOUTHEASTERN as the agent for WILMART ASSOCIATES INC., in the payment of the note in the amount of $200,000. An attorney, Jerome B. Fleishman, was engaged by HELD to move to quash the subpoenas of the Attorney General. That motion before Mr.

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Justice Sam Spiegel was denied. Miss Rappaport testified at this office that she took messages for HELD from several of the individuals involved in this investigation including John Zeeman of Apollo Industries and LEO EISENBERG, the owner of MONARCH FUNDING CORP. She indicated that HELD and EISENBERG had been acquainted for many years going back to a period of time when HELD and a group of his associates were esconced in the Empire State Building during the time when they controlled Continental Strategics Corporation and other companies. Miss Rappaport testified that she met HELD when she was first employed by Taylor Sportswear Inc., a company in which HELD had some interest.

Gail Rappaport was the purchaser of some $9,000 worth of SOUTHEASTERN stock according to the confirmations of sales by MONARCH FUNDING CORPORATION. Miss Rappaport has testified before this office to the fact that she had been recently informed that she was denominated as a purchaser of 100 shares ($500 worth of stock) only by Mr. Barrata of the law firm of Schneider and Barrata. Our examination indicates that HELD paid for these shares nominally in the name of Miss Rappaport.

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It has also been discovered that HELD was instrumental in promoting the purchase by Shaskan and Company of 10,000 shares of the stock of SOUTHEASTERN by convincing its principals to put their clients in the stock. Our inquiry also discloses that HELD was instrumental in and touted the stock to other brokers and purchasers and may in fact be an undisclosed principal in some brokers participating in the SOUTHEASTERN underwriting. Participating brokers in the underwriting have described HELD as a promoter but deny knowing his connection with Wilmart Associates Inc.

Included in this investigation also is the fact that stock purchases of SOUTHEASTERN were made by undisclosed principals on instructions of the Bank of Paris, Geneva, Switzerland. It is not inconceivable that these purchases may be connected with the mysterious HELD. It is also interesting to note that in a law suit that HELD is presently bringing against one David Camner in the Federal Court, Southern District of New York, HELD has designated the venue of the Southern District by virtue of being a resident of the State of New York and New York County. That suit involves another aspect of HELD's activities as a promoter of securities within this State.

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Our investigation has also revealed that HELD occupies or has occupied offices in the suite of Schneider and Barrata at 1250 Broadway as the Amex Corporation and Ballantine & McForbes.

WILLIAM MANNING one of the principals of SOUTHEASTERN and a former employee of HELD in Continental Strategics Corporation testified that he was the owner of the Amex Corporation and that on one occasion when one of the properties owned by HELD during this term as president of Continental Strategics Corporation was being foreclosed upon by a Georgia Bank. MANNING through Amex Corporation intervened at the last hour and purchased the property in the name of Amex Corporation by merely assuming the mortgage payments previously in default by HELD. It was revealed that approximately one year later MANNING and his Amex Corporation conveyed this property back to HELD for no consideration other than the assumption by HELD of the mortgage then outstanding as reduced.

It is also interesting to note that listed on the directory for room 1803 in addition to the firm of Schneider and Barratta who have been counsel in many merger negotiations and acquisitions concerning MR. HELD, there appears the name of Harold C. Herman who also

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appears on the stationery of Schneider and Barratta. Mr. Herman has represented one side of some of the merger transactions associated with HELD and Mr. Schneider has represented the other side in these transactions. Mr. Herman is well known to this New York State Attorney General's Office having previously been investigated in connection with the spinoffs of various companies by Herman Appley Inc., several years ago. As a result of that investigation information supplied to the Securities and Exchange Commission resulted in a Securities and Exchange Comm. proceeding that obtained an order against Herman which barred him from the securities business. In this investigation we have ascertained that Mr. Herman was instrumental in the placement of stock of SOUTHEASTERN by the recommendation of its purchase to purchasers.

It also appears to be more than a mere coincidence that the underwriter, MONARCH FUNDING CORP., who in the past has had a variety of New York attorneys represent the firm should select a Florida attorney, Edith Cooper, who is Held's sister, to represent the firm for this underwriting. Deponent would seek to question Edith Cooper concerning her connections with Wilmart Associates, Inc., SOUTHEASTERN, MONARCH & Irwin Schneider.

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Testimony before this office indicates that Mr. Schneider is not merely the attorney for this transaction but appears in many cases to be a principal in some of these mergers and acquisitions.

Another point of inquiry is the fact that after the underwriting of the SOUTHEASTERN stock, $201,870 came into the possession of WILMART ASSOCIATES, INC. on the date of the closing of the underwriting, March 17, 1972. On the same day a check was drawn to the order of Schneider and Barratta in the amount of $92,000.00. Your deponent would seek to question IRWIN SCHNEIDER to ascertain the reason for the issuance of such check.

The testimony already given in this office has revealed that this request for further testimony and for testimony from parties who have either refused to appear or who have made themselves unavailable to the requests and process of this office is necessary. In connection with the above matters the sworn testimony is needed of the persons mentioned as witnesses above.

It is urged upon this Court, that the Attorney General is about to bring an action under Article 23-A of the General Business Law to bar and enjoin permanently from the securities business within and from this State

EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

SOUTHEASTERN PROPERTIES, INC., MONARCH FUNDING CORP., WILLIAM V. HELD, ANTHONY J. DE MATTEO, WILLIAM L. MANNING, LEO EISENBERG and others found to have engaged in fraudulent practices as brought out in this investigation.

It is essential and in the public interest and within the purpose and policy of Article 23-A of the General Business Law of this State that the above enumerated persons be examined before this Court under oath and that all transactions involving the securities of SOUTHEASTERN be stayed pending the further order of this Court and that the transfer of funds resulting from the unregistered sale of this stock also be stayed pending the further order of this Court. In order to facilitate and expedite this

deems it in the public interest to conduct further examination of the above witnesses in Special Term, Part II of this Court so that possible objections may be ruled upon by this Court.

No previous application for the relief sought herein has been made to any Court or Judge.

THOMAS N. DOLAN
Assistant Attorney General

Sworn to before me this
7th day of Sept., 1972.
O. J. MINALY
Assistant Attorney General
of the State of New York

AFFIDAVIT OF LESTER ESTERMAN, SWORN TO SEPTEMBER 29, 1972, IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

LESTER ESTERMAN, being duly sworn, deposes and says: I am a member of the firm of Hart & Hume, attorneys for defendants JAMES HENRY and HENRY, McCORD, FORRESTER & RICHARDSON in the above action, and I submit this affidavit in opposition to plaintiff's motion pursuant to Rule 23 to declare this action a class action.

The complaint in this action, as amended, alleges three contentions concerning the prospectus issued by defendant Southeastern Properties, Inc., to wit: (a) the prospectus failed to disclose pendency of merger negotiations between Southeastern and Apollo Industries, Inc. (b) the prospectus failed to disclose that Southeastern had failed to comply with filing requirements of the States of New York and New Jersey and (c) the assets shown on the prospectus financial statements were artificially inflated.

AFFIDAVIT OF LESTER ESTERMAN, SWORN TO SEPTEMBER 29, 1972, IN OPPOSITION TO MOTION

As to the contention concerning Apollo Industries negotiations, it is submitted that the affidavit of defendant Irwin D. Schneider sworn to June 1, 1972. (Exhibit "A") and submitted to this Court previously in connection with another motion in this action, presents a factual rebuttal as to the ultimate validity of the contention.

In that affidavit Schneider stated:

> "As for the allegation concerning discussions with APOLLO INDUSTRIES, INC. prior to the effective date of the Registration Statement, I can categorically deny having any knowledge that any such negotiations took place. However, *after* the Registration became effective, and after the closing of the issue had taken place and the inve tigation of the Attorney General of the State of New York had effected the trading of defendant SOUTHEASTERN, preliminary discussions were had with APOLLO but no concrete agreements of any kind resulted. I, on behalf of the Company, personally notified the SECURITIES AND EXCHANGE COMMISSION that such negotiations were taking place and was

> advised by the SEC that public disclosure was not necessary under the facts outlined. Indeed, if the Company had disregarded the SEC's advice, it could possibly have been accused of 'puffing'."

As to the contention that requisite State filings were not made, I am informed by attorneys for Southeastern that active steps aimed at a complete recission of the offering are now in process. If successful, the shareholders will thus be made whole and sustain no loss whatsoever. I do not know the timetable of this recission program, but it is apparent that the passage of some additional time before determining this to be a class action, might very well spare the shareholders the expenses attendant in a class action determination, i.e. * * * counsel fees and the cost of notice. Further, there would be no apparent prejudice to the rights of the stockholders by allowing the class action determination to be delayed, so as to allow the recission program to become effective.

Plaintiff's contention that the financial statements contained inflated asset computations is without factual foundation. The claim of inflated asset evaluation is

AFFIDAVIT OF LESTER ESTERMAN, SWORN TO SEPTEMBER 29, 1972, IN OPPOSITION TO MOTION

first made in paragraph "21" of plaintiff's amended complaint (Exhibit "B"). In response to interrogatories (Exhibit "C"), plaintiff further stated that paragraph "21" in the complaint was based upon plaintiff's reading of the prospectus. The pivotal point of plaintiff's claim, i.e. that "International's corporate note had a value substantially less than its principal face amount" (page 4 of the moving affidavit) is not supported by any evidence before this Court other than plaintiff's own statement.

It is submitted that plaintiff has not shown the requisite probability of success on the merits in this action so as to entitle it to a class action determination. Moreover, the interests of justice would be served by delaying such a determination, if in fact it is to be made, pending further developments and exploration of Southeastern's recission plan.

WHEREFORE, for the reasons set forth herein it is respectfully requested that this Court deny plaintiff's motion.

(Sworn to by Lester Esterman, September 29, 1972.)

EXHIBIT A, ATTACHED TO AFFIDAVIT OF LESTER ESTERMAN--
AFFIDAVIT OF IRWIN N. SCHNEIDER.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE
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State of New York,

County of New York, ss:

I, IRWIN N. SCHNEIDER, being duly sworn, depose and say:

I am an attorney duly admitted to practice before this court and I'm a member of the firm SCHNEIDER & BARATTA, one of the defendants in the above entitled action. I am fully familiar with all the facts and circumstances herein, and respectfully submit this affidavit in support of the within motion for an order dismissing plaintiff's complaint.

I have worked on this matter since its inception and am personally familiar with every aspect of this case. Without going into details which would involve an attorney-client relationship, I will set forth the facts which I believe refute the allegation set forth in the complaint herein.

EXHIBIT A, ATTACHED TO AFFIDAVIT OF LESTER ESTERMAN

As stated in the complaint, my firm was retained as special counsel to defendant SOUTHEASTERN in connection with the public offering herein. Pursuant to the laws of the states of New York and New Jersey, we legended the front of each and every prospectus with the statement that certain filings were required in New York and New Jersey. In fact, we did make such filings with the Attorneys General of the respective states.

At this time, the Attorney General of New York is conducting an investigation into certain aspects of the public offering as it pertains to New York residents. However, he has not commenced any action or proceeding nor issued any orders with regard to the trading of the stock in New York. Upon information and belief, the stock is still tradeable in other states in which the Company qualified. If trading has been halted in New York, it is solely as a result of the rumors concerning the Attorney General's investigation, and so perhaps it is the Attorney General of New York who should be made a defendant in this action.

As for the allegation concerning discussions with APOLLO INDUSTRIES, INC. prior to the effective date of the Registration Statement, I can categorically deny

EXHIBIT A, ATTACHED TO AFFIDAVIT OF LESTER ESTERMAN

having any knowledge that any such negotiations took place. However, *after* the Registration became effective, and after the closing of the issue had taken place and the investigation of the Attorney General of the State of New York had effected the trading of defendant SOUTHEASTERN, preliminary discussions were had with APOLLO but no concrete agreements of any kind resulted. I, on behalf of the Company, personally notified the SECURITIES AND EXCHANGE COMMISSION that such negotiations were taking place and was advised by the SEC that public disclosure was not necessary under the facts outlined. Indeed, if the Company had disregarded the SEC's advice, it could possibly have been accused of "puffing".

No Stop Trading Orders have been issued by either the Attorney General of New York or of New Jersey. It is interesting to note that the plaintiff makes certain allegations in his complaint regarding failure to properly file which findings have not been made by any Attorney General. It would seem to me that the plaintiff had "jumped the gun" in that he apparently is anticipating what he hopes will be the finding of the Attorney General of New York.

EXHIBIT A, ATTACHED TO AFFIDAVIT OF LESTER ESTERMAN

Although plaintiff alleges in his complaint that certain material misrepresentations were made in the prospectus and Registration Statement, no such concrete allegations appear anywhere in the complaint. Therefore, that part of the complaint which alleges such misrepresentations must be stricken as not having been properly alleged. I respectfully refer the court's attention to the memorandum of law accompanying these motion papers for the statutes and cases affirming the positions set forth herein.

WHEREFORE, it is respectfully requested that an order be made dismissing the complaint with prejudice and costs on this motion, along with such other and further relief as to this court may seem just and proper.

(Sworn to by Irwin N. Schneider, June 1, 1972.)

EXHIBITS B AND C, ATTACHED TO AFFIDAVIT OF LESTER ESTERMAN--AMENDED COMPLAINT AND PLAINTIFF'S ANSWERS TO INTERROGATORIES.

(Reproduced, *supra*, at pages 5a to 13a and 104a to 108a.)

AFFIDAVIT OF EDMUND PREISS, SWORN TO OCTOBER 2, 1972, IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE
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State of New York,

County of New York, ss:

EDMUND PREISS, being duly sworn, deposes and says:

1. I am a member of the firm of Kane, Kessler, Preiss, Rand & Proujansky, P.C., attorneys for defendant, MONARCH FUNDING CORP., in the above entitled action and make this affidavit in opposition to plaintiff's motion for an order pursuant to FRCP Rule 23(c)(1) determining this action to be a class action.

2. The granting of plaintiff's motion will prejudice the "would be members of the proposed class" and defeat the very purpose for which Rule 23(c)(1) was inacted, to aid in making whole all members of a class who, similarly situated, have sustained damages.

3. Plaintiff, alleging securities acts violations, has commenced an action to recover on behalf of himself and all others similarly situated money allegedly lost by reason of the purchase of stock of defendant,

AFFIDAVIT OF EDMUND PREISS, SWORN TO OCTOBER 2, 1972, IN OPPOSITION TO MOTION

SOUTHEASTERN PROPERTIES, INC. I am advised that defendant, SOUTHEASTERN PROPERTIES, INC., has offered to rescind the offering pursuant to which the aforesaid stock was sold to the members of the proposed class and will pay back to every "would be" member of the proposed class 100% of the money paid by said "member" for the purchase of the stock. In connection therewith, I am further advised that SOUTHEASTERN PROPERTIES, INC.'s Board of Directors has adopted a resolution to take all appropriate measures to effect an offer which would entitle shareholders who purchased their shares to rescind their purchases; to sell company properties in order to provide funds necessary to effect the rescission; to formulate a suitable procedure and schedule to effect the rescission offer and to take appropriate steps to obtain clearance from regulatory agencies having jurisdiction. The shareholders have been so advised by a SOUTHEASTERN PROPERTIES, INC. letter dated August 14, 1972, a copy of which is annexed hereto.

4. It is apparent that if the rescission is effected, each "member of the class" will expeditiously obtain the remedy of rescission demanded in the amended complaint herein while avoiding considerable unnecessary expense,

AFFIDAVIT OF EDMUND PREISS, SWORN TO OCTOBER 2, 1972, IN OPPOSITION TO MOTION

waste of time and litigation. Indeed, declaring this action a class action may jeopardize the stockholders' position because it will expose SOUTHEASTERN PROPERTIES, INC. to additional and further expenses and fees, which sums the company could directly use to effect the offer of rescission. It appears that it would be in the best interests of the stockholders to deny the plaintiff's application without prejudice to renew, so as to allow the rescission program which, we are advised, is now in process to become effective.

5. I have read the well reasoned affidavit of Lester Esterman, Esq. and the accompanying memorandum of law submitted in opposition to the instant motion on behalf of defendants, JAMES HENRY and HENRY, McCORD, FORRESTER & RICHARDSON. I agree with the contentions set forth therein and respectfully invite the court's attention to the argument that the plaintiff has not shown the required probability of success on the merits in a trial of this action, and for that reason alone the motion should be denied.

WHEREFORE, for the reasons set forth above, it is respectfully requested that this court deny plaintiff's motion.

(Sworn to by Edmund Preiss, October 2, 1972.)

EXHIBIT A, ATTACHED TO AFFIDAVIT OF EDMUND PREISS--
LETTER DATED AUGUST 14, 1972.

(Reproduced, *supra*, at pages 127a to 128a.)

AFFIDAVIT OF HOWARD J. GOLDSTEIN, SWORN TO OCTOBER 9, 1972, IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

I, HOWARD J. GOLDSTEIN, being duly sworn, depose and say:

I am the attorney of record for Defendants SCHNEIDER & BARATTA in the above matter and am fully familiar with all the facts and circumstances herein. I respectfully submit this Affidavit in opposition to Plaintiff's motion for an order pursuant to Rule 23 of the Federal Rules of Civil Procedure to declare this action a class action.

The Affidavits submitted by Lester Esterman and Edmund Preiss adequately set forth the contention that in view of the proposed rescission of the offering now in progress, any determination that this is a class action should be denied or, at the very least, postponed to a future date so as not to prejudice such a rescission offer with additional legal expenses. It should also be

AFFIDAVIT OF HOWARD J. GOLDSTEIN, SWORN TO OCTOBER 9, 1972, IN OPPOSITION TO MOTION

stressed, again as mentioned in both of the aforesaid affidavits, that Plaintiff has not only not shown that he has a chance to succeed in this action, but has based his entire complaint on rumor and hearsay allegedly originating with brokers he dealt with. In addition, insofar as he seeks to predetermine what the Attorneys General of New York and New Jersey may or may not do in the future, he is at best premature with this entire action.

It has lately come to my attention that MR. WECHSLER is the Plaintiff in a similar class action presently pending in this Court. I have as yet not been able to locate the file and review it, but, if true, it would raise serious questions as to whether or not MR. WECHSLER brought this action simply to generate legal fees, as he himself is a practicing attorney. I think this question should be explored by a hearing before the Court prior to any determination on this motion.

WHEREFORE, it is respectfully requested that the within motion be in all respects denied or, in the alternative, that the entire question of Plaintiff's right to represent a class be the subject of a hearing before this Court.

(Sworn to by Howard J. Goldstein, October 9, 1972.)

REPLY AFFIDAVIT OF EDWARD LABATON, SWORN TO OCTOBER 12, 1972, IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

EDWARD LABATON, being duly sworn, deposes and says:

1. I am a member of the firm of Shatzkin and Cooper, attorneys for plaintiff in this action, and submit this Reply Affidavit in support of the motion to declare the action a class action.

2. Defendant Southeastern Properties, Inc. ("Southeastern") and other defendants oppose the motion on the ground that Southeastern is considering a rescission offer. Some of the defendants (James Henry and Henry, McCord, Forrester & Richardson) also contended that there is a lack of probable merit to the case. Another defendant (Schneider & Baratta) by innuendo challenges plaintiff's motives.

3. This action was commenced on May 2, 1972. On September 13 of this year, it was reported in the press

that the Attorney General of the State of New York had charged Southeastern with a variety of acts, including some of the matters complained of herein (see Exhibit A hereto). The Attorney General's papers are annexed to the affidavit of Arnold I. Burns, Esq. as Exhibit B. It should be noted that the action of the Attorney General does not purport to be brought on behalf of the class of persons who purchased stock registered under the prospectus nor is it brought under the Securities Act of 1933 or the Securities Exchange Act of 1934. Following the commencement of this action, Southeastern mailed to its stockholders a letter dated June 22, 1972 (Exhibit B hereto) and thereafter mailed a letter dated August 14, 1972 (Exhibit A to the Burns' affidavit). The following relevant facts with respect to those letters should be noted.

(a) Although the August 14th letter indicates that the company is considering making a rescission proposal, it explicitly states that "no assurances can be given" that it will have the proceeds to make the rescission offer.

REPLY AFFIDAVIT OF EDWARD LABATON, SWORN TO OCTOBER 12, 1972, IN SUPPORT OF MOTION

(b) There is no suggestion that the defrauded purchasers of Southeastern stock will receive interest in the event that rescission is made.

(c) There is no indication as to what steps have been taken to assure that the proceeds of the public offering are not further dissipated pending any rescission offer.

(d) There is no disclosure of the flagrant conduct charged in this action and by the Attorney General.

(e) Most important, there is no disclosure that any action has been started to obtain relief on behalf of the public shareholders of Southeastern.

4. Assuming rescission were to be offered, it should of course be accompanied by a full and complete disclosure of the true facts relating to the prospectus, the underlying assets and the conduct of the defendants, so that an informed decision by the public could be made. In the event that proceeds from the proposed sale of properties were insufficient to make a full offer of rescission with interest, then the other defendants against whom claims have been asserted should be held liable so that the public could be fully compensated. As to all these requirements, the class of public

stockholders should be represented by counsel. In view of the flagrant conduct charged by the Attorney General in the action brought in the Supreme Court of the State of New York, the fate of the public stockholders should not be left in the hands of these defendants. Southeastern admits in its brief (pp. 7-8) that it intends to assert that the Attorney General does not have jurisdiction over it. In any event, the Attorney General cannot divest this court of jurisdiction by persons having claims under the Securities Act of 1933 and the Securities Exchange Act of 1934.

5. The suggestion that there might be a proposal to rescind comes in a letter dated August 14, 1972, which letter followed by two weeks the notice of motion which has brought on this motion; furthermore, it follows by three months the commencement of the action and by almost a month the service of an answer by Southeastern and other defendants denying the material allegations of the complaint. The indication that there may be a rescission offer if Southeastern can sell its properties comes after substantial litigation in this case including (a) the argument of a motion to dismiss by Schneider & Baratta (denied by Judge Gurfein, see Exhibit C hereto);

(b) the service of interrogatories and notices to produce and notices of depositions on Southeastern and other defendants; and (c) litigation before Judge Breient for a motion for a protective order by Southeastern, which motion was granted in part and denied in part. (The order directed that the depositions be held in Chattanooga but it directed that documents be produced in New York prior to the depositions. Despite numerous requests for the documents, they have yet to be produced and hence the depositions have not yet taken place.)

6. As for the assertion that the action lacks merit, we need only refer to Judge Gurfein's decision indicating that the failure to disclose the inadequate filings with the Attorney General's office and the merger negotiations with Apollo, if proven, were material omissions. The affidavit of Mr. Dolan (pp. 4-6 - Burns affidavit Exhibit B) is certainly sufficient to support our contention that the complaint has probable merit as to the allegations with regard to the inadequate filings and the undisclosed merger negotiations with Apollo. As for the third key allegation in the amended complaint, the placing of a value on assets in excess of their true value, it should be noted that the affidavit of Mr. Dolan

indicates that the transaction by which the assets were acquired was not at arm's-length (Dolan affidavit p. 7). The prospectus indicates that the assets were acquired in part for a promissory note in the face amount of $1,328,000 with interest at 4% per annum. It does not require a high degree of financial acumen to recognize that that note was not worth $1,328,000 and that therefore the assets acquired for it should not have been valued at the principal face amount of the note.

7. The attack upon plaintiff's motives is unfounded and is irrelevant. Plaintiff is not appearing *pro se*. My firm and I are thoroughly experienced in class action litigation (see moving affidavit p. 5).

8. On the basis of the foregoing, we submit that even if a rescission offer is to be made, it is a result of this action and therefore the action should be declared a class action, so that as representatives of the class we can pass upon the adequacy of the rescission offer itself and the sufficiency of the notice of the rescission offer. There is serious question as to whether the assets of Southeastern should remain in the control of the defendants in this action in the light of the charges made by the Attorney General. In this

REPLY AFFIDAVIT OF EDWARD LABATON, SWORN TO OCTOBER 12, 1972, IN SUPPORT OF MOTION

connection, it should be emphasized that Southeastern is taking the position that the Attorney General and the New York courts lack jurisdiction over Southeastern (Burns affidavit ¶7). Under the federal securities laws, this court would certainly have jurisdiction and it is probable that this civil action is the most effective way of resolving the controversy, especially since many of the stockholders of Southeastern presumably reside outside of the State of New York and may not have the protection of the Attorney General's order. Finally, if the court should determine that this action was a factor in the making of a rescission offer, defendants should be required to pay fees and expenses of counsel.

Wherefore, it is respectfully requested that the plaintiff's motion to declare the action a class action be granted.

(Sworn to by Edward Labaton, October 12, 1972.)

EXHIBIT A, ATTACHED TO REPLY AFFIDAVIT OF EDWARD LABATON--NEWSPAPER ARTICLE.

Tennessee Land Firm Is Accused of Selling Unregistered Shares

Southeastern Properties Also Is Charged With Misrepresenting Facts by State of New York

By a WALL STREET JOURNAL *Staff Reporter*

NEW YORK —New York State's attorney general charged that a Tennessee land company sold $1 million of unregistered shares here last March while misrepresenting and omitting material facts in its prospectus.

In papers filed in a state court here, Louis J. Lefkowitz asserted that the company—Southeastern Properties Inc., headquartered in Chattanooga—hadn't yet complied with a notice issued last March to refund to the investing public the $1 million raised in the underwriting. However, attorneys for Southeastern Properties said yesterday that the company is prepared to refund the money.

The attorney general asserted that 200,000 shares, sold at $5 each, hadn't been registered for sale in New York State, although the Southeastern Properties prospectus said they had been.

In addition, he asserted that the prospectus failed to disclose that the company was holding merger negotiations with Apollo Industries Inc., a Pittsburgh-based diversified holding company whose shares are traded on the American Stock Exchange. "In effect this offering was an attempted offering of Apollo Industries concerning which no information was provided to investors," the state papers said.

Finally, it was alleged that Southeastern Properties used a complex scheme to mask the involvement in the company of William V. Held, whom the court papers described as "a principal and promoter" of the offering, "to avoid disclosing possible unfavorable information in his background and to thwart the Internal Revenue Service from levying (taxes) on properties and assets belonging to him."

The papers charged that Mr. Held "in 1969 and 1970 was the subject of an intensive investigation by the Internal Revenue Service in Tennessee, at which time it was alleged that he controlled some 16 corporations with scores of bank accounts located all over the country." The state papers said it is believed the IRS inquiry still is pending.

Mr. Held couldn't be reached for comment.

Mr. Lefkowitz's papers were filed in connection with a request for a court order, which has been granted, requiring the appearance Oct. 13 for examination by Mr. Lefkowitz's staff of a number of parties assertedly connected with the underwriting.

They include Southeastern Properties and two of its officers—Anthony J. DeMatteo and William L. Manning; Monarch Funding Inc., a New York securities firm that underwrote the offering; Leo Eisenberg, Monarch Funding's principal; Wilmart Associates Inc., a company assertedly controlled by Mr. Held; John Zeeman, president of Apollo Industries; Irwin Schneider, who had been counsel for Southeastern at the time of the underwriting, and Edith Cooper, Mr. Held's sister, who was described as counsel for the underwriters at that time.

The papers said further that the attorney general's office "is about to bring an action" against some of the parties to permanently bar them from the securities business within the state. These include Southeastern Properties, Monarch Funding and Messrs. Held, DeMatteo, Manning and Eisenberg.

Arnold I. Burns, who said his law firm--Schwartz, Mermelstein, Burns, Lesser & Jacoby--was retained by Southeastern after the Lefkowitz investigation began, declined yesterday to comment on the omission and misrepresentation charges on the ground that copies of the papers hadn't been served.

However, he said that Southeastern's board last month had passed a resolution rescinding the public offering and offering each holder the opportunity to cancel his stock purchase and get his money back. Holders have been so advised by letter, he added.

Mr. Burns also said that no merger contract between Southeastern and Apollo had ever been drawn up.

Officials of Apollo couldn't be reached for comment, nor could Mr. Schneider or Mrs. Cooper.

Edmund Preiss, attorney for Monarch Funding, declined comment on the ground that copies of the papers hadn't been served.

Wall Street Journal
Sept. 13, 1972

EXHIBIT B, ATTACHED TO REPLY AFFIDAVIT OF EDWARD LABATON--
LETTER DATED JUNE 22, 1972.

Continental Corporation, Inc.

June 22, 1972

Dear Stockholder:

This letter supplements our letters to you dated March 27, 1972 and May 19, 1972.

We have been primarily exploring the following courses of action:

1. A rescission offer by the Company granting you an opportunity to receive $5.00 per share for each share which you return to the Company.

2. The rescission offer noted in point 1 coupled with a stand-by commitment by an underwriter to purchase all shares tendered by stockholders for resale to the public.

3. A statutory merger with a recognized publicly held company which would grant stockholders who do not want to receive shares in the new company rights of appraisal, the minimum appraisal rights being fixed at $5.00 per share.

4. A resolution of the review by the Attorney General of the State of New York of the Company's blue sky filing. the removal of all problems relating to the free transferability of the Company's shares, and the continuation of the Company's business.

5. The continuation of the Company's business for the time being without the immediate resolution of point 4.

The route which the Company follows is, in our view, substantially dependent upon the position which the Attorney

EXHIBIT B, ATTACHED TO REPLY AFFIDAVIT OF EDWARD LABATON

June 22, 1972

General takes concerning its review of the Company's blue sky filing. We anticipate that we shall shortly ascertain that position with some degree of certainty and that we will then be in a position to move to implement the decision reached. Of course, as in the past, we will keep you promptly apprised.

We are very mindful of and sympathetic to the problems which, through no fault of the Company, have been visited upon its stockholders. We want you to know that we are doing everything in our power to resolve these problems and put the Company into a posture which will be beneficial to its stockholders.

We have a viable company and our properties are presently intact as described in the Prospectus.

The Company has a closing scheduled for July 7, 1972 for $90,000 on Parcel 19. Our original cost, as noted in the Prospectus, was $47,984.

On June 16, 1972 we received an offer to purchase four acres of Parcel 12 at $75,000 an acre. A $5,000 earnest check accompanied this offer. Although there can be no assurance that this offer will result in a sale, we expect that a sale will be consummated in the near future on a profitable basis. After the sale, we will have remaining 8-1/2 acres of this parcel for which negotiations are presently pending for sale or lease.

We are presently developing Parcel 12. Boat docks and launching ramps have been completed. Upon completion of roads, we anticipate approximately 50 lake front lots.

It is unfortunate that the actions of the New York Attorney General's office have interrupted the normal course of the Company's business. We are most appreciative of your patience and are hopeful that we can advise you shortly of the action we expect to take to resolve the outstanding problem. Please feel free to contact our office at any time.

Very truly yours,

SOUTHEASTERN PROPERTIES, INC.

By: Anthony J. DeMatteo

Anthony J. DeMatteo
President

EXHIBIT C, ATTACHED TO REPLY AFFIDAVIT OF EDWARD LABATON --OPINION OF GURFEIN, J., DATED JUNE 28, 1972.

(Reproduced, *supra*, at pages 45a to 48a.)

AFFIDAVIT OF ANTHONY J. DeMATTEO, SWORN TO OCTOBER 18, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of Tennessee,

County of Hamilton, ss:

ANTHONY J. DEMATTEO, being duly sworn, deposes and says:

1. I am the President of Southeastern Properties, Inc. (hereinafter "Southeastern" or the "Company"), am personally familiar with the facts herein set forth, and make this affidavit to inform this Court of Southeastern's efforts to marshall its assets and to conserve the proceeds of the public offering of its common stock for the purpose of making an offer of rescission.

2. After the New York Attorney General's office, in March of 1972, first informed the Company of its dissatisfaction with the New York State Blue Sky filings, the Board of Directors of Southeastern decided to keep the then remaining proceeds of the public offering intact. A copy of a letter dated March 27, 1972, so advising the

AFFIDAVIT OF ANTHONY J. DeMATTEO, SWORN TO OCTOBER 18, 1972

Company's shareholders is annexed hereto as Exhibit A. However, this voluntary freeze of funds seriously threatened the Company's ability to continue in business because necessary payments to mortgagees, municipal tax authorities, and other creditors were not being made.

3. By mid-May of 1972, the Board of Directors in the absence of any settlement with the Attorney General and faced with the pendency of this proceeding, decided that, in order for the Company to survive, it would be necessary to apply such portion of the proceeds of the public offering as might be required to meet mortgage payments, real estate taxes, officers' salaries, office expenses and attorneys' fees (hereinafter referred to as the Company's "normal operating expenses"). Aside from the development of parcel 12, to which the Company was contractually committed, which development was described on page 12 of the Company's prospectus, and the payment of normal operating expenses, no expenditures have been authorized which are not designed to conserve the Company's assets and to increase its liquid position. A copy of a letter to shareholders dated May 19, 1972, which is annexed hereto as Exhibit B set forth the Company's decision to function in this limited fashion.

AFFIDAVIT OF ANTHONY J. DeMATTEO, SWORN TO OCTOBER 18, 1972

4. In order to reduce the Company's normal operating expenses, William L. Manning and I, in June of 1972, voluntarily reduced our salaries from the $25,000 annual figure indicated in the prospectus to, in my case, $10,000, and, in the case of Mr. Manning, $20,000.

5. Since the Company's August 14, 1972, decision to take such steps as might be necessary to effect an offer of rescission to stockholders, even the limited development of Company properties described in paragraph 3 above and again in the June 22, 1972 letter to shareholders, a copy of which is annexed as Exhibit C, has ceased. The proceeds of the offering which, after payment of all normal operating expenses, including substantial debt service, remained at roughly $300,000, as of September 15, 1972, are deposited in a bank account which is being maintained for the sole purpose of implementing the rescission offer. Current normal operating expenses are being met from the proceeds of the sale of Company properties. One such sale was consummated in the latter part of September for a purchase price of $73,750. The net proceeds of that sale should suffice to cover normal operating expenses at least until the end of this year.

AFFIDAVIT OF ANTHONY J. DeMATTEO, SWORN TO OCTOBER 18, 1972

6. I am annexing hereto three contracts for the sale of Company properties which, if consummated, will yield an additional $640,000 that can be used to carry out an offer of rescission. The first of these contracts (Exhibit D) will net $193,500; the second (Exhibit E) will net $184,621, and the third (Exhibit F) will net $263,250. The presently scheduled closing dates of these contracts are October 20, 1972, January 3, 1973, and December 29, 1972 respectively. The Company knows of no existing impediments to the timely closing of these contracts.

7. To the extent that any additional funds over and above the net proceeds of these sales may be required to effectuate an offer of rescission, the Company will still own 16 parcels of land which can be sold or mortgaged to further supplement the account now intended to be used for that purpose. The appraised value of those parcels is in excess of $1,000,000 while, as of January 15, 1973, less than $150,000 will be owed thereon to mortgagees. Accordingly, Company Management is of the opinion that, subject to securing the approval of the

AFFIDAVIT OF ANTHONY J. DeMATTEO, SWORN TO OCTOBER 18, 1972

Attorney General's office, within the next ninety days Southeastern will be in a financial position to proceed with a rescission offer and that it will have funds on hand with which such an offer can be consummated to the extent that stockholders are willing to accept the same.

(Sworn to by Anthony J. DeMatteo, October 18, 1972.)

AFFIDAVIT OF CARL G. BARTHOLOMAUS, SWORN TO NOVEMBER 2, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

CARL G. BARTHOLOMAUS, being duly sworn, deposes and says:

1. I am associated with the firm of Schwartz, Mermelstein, Burns, Lesser & Jacoby, attorneys for defendant SOUTHEASTERN PROPERTIES, INC. (hereinafter "Southeastern" or the "Company") and make this affidavit to inform this Court of the Company's progress toward the sale of its land holdings.

2. This office has received from the Company notice that the closing on the parcel to be purchased by Urbane Constructors, Inc., originally scheduled for October 20, 1972, has been adjourned to November 30, 1972.

3. Southeastern has informed us that an additional $5,000 earnest money, in the form of a promissory note, has been received as consideration for the extension of

AFFIDAVIT OF CARL G. BARTHOLOMAUS, SWORN TO NOVEMBER 2, 1972

time on the closing. Copies of a letter from Urbane Constructors, Inc., dated October 20, 1972, and the enclosed promissory note are annexed hereto as Exhibit A. A copy of a telegram from the Vice President of Urbane Constructors, Inc. advising the Company of its success in negotiating financing for the purchase is annexed hereto as Exhibit B.

(Sworn to by Carl G. Bartholomaus, November 2, 1972.)

SUR-REPLY AFFIDAVIT OF CARL G. BARTHOLOMAUS, SWORN TO NOVEMBER 8, 1972, IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

CARL G. BARTHOLOMAUS, being duly sworn, deposes and says:

1. I am associated with the firm of Schwartz, Mermelstein, Burns, Lesser & Jacoby, attorneys for defendants Southeastern Properties, Inc. (hereinafter referred to as "Southeastern" or the "Company"), Anthony J. De Matteo, William L. Manning, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III and Chalmers K. Smith and make this affidavit in opposition to plaintiff's motion that the within action be maintained as a class action pursuant to Federal Rule 23.

2. Plaintiff's supplemental reply memorandum dated October 25, 1972, submitted in an apparent attempt to block the Company from proceeding with its plan to voluntarily liquidate several of its properties and return to

such of the Company's shareholders as may desire the same the money which they originally invested, either intentionally or through ignorance of the true facts, endeavors to mislead this Court with respect to the Company's financial history and present condition.

3. Annexed hereto and made a part hereof as Exhibit A is a copy of the Company's 10-K with exhibits for the year ending April 30, 1972 which was filed with the Securities and Exchange Commission on or about July 26, 1972. The Company has advised my office that this report represents the most recent complete statement of the Company's financial affairs and that no further statement has been required by the Commission to date. The Company has further advised my office of its desire not to incur any unnecessary audit expense which would delay or hinder its plan to effect an offer of rescission by depleting the $300,000 fund now reserved for that purpose.

4. This Form 10-K was readily available to plaintiff's attorneys in the files of the S.E.C., and it, as well as the Company's prospectus, shows how over $560,000 of the money derived from the original public offering was necessarily committed. On pages 6 and 7 of the prospectus, the following expenditures from the fund created by the offering were described:

SUR-REPLY AFFIDAVIT OF CARL G. BARTHOLOMAUS, SWORN TO NOVEMBER 8, 1972, IN OPPOSITION TO MOTION

	Expenses	Amount
1.	Underwriter's Commissions, discounts, and expenses of the offering.	$155,824.
2.	Payment to satisfy note which was executed by International Land Locators, Inc., assumed by Southeastern, and issued to pay for Company's parcels of land as described in the prospectus.	$199,870.
3.	Payment to satisfy short term bank note.	$ 90,000.
4.	Working Capital to be used for officers' salaries, mortgage payments, real estate taxes, attorney's fees, and other expenses.	$100,000.
5.	Development of Parcel number 12, described in detail on page 12 of the prospectus.	$ 15,000. was actually spent to satisfy a prior contractual commitment, against a total of $30,000. allocated for development of parcel 12 in the prospectus.
	Total	$560,694.

5. The Company has further advised my office that all of the above-enumerated expenditures have been made. Additional costs have been incurred because of the Attorney General's investigation and the pendency of this

proceeding which were not offset by income from the sale of properties. Among these are additional mortgage payments and real estate taxes which could have been paid from income if the Company had been allowed to operate freely, and, of course, attorney's fees made necessary both by this proceeding and that brought by the Attorney General.

6. Thus, it is apparent from the Company's prospectus, with which plaintiff is concededly familiar, that plaintiff's attorneys could have been presented to this Court a memorandum analyzing the Company's financial condition which did not set up the distorted straw men which they then proceeded so vigorously to attack. (See pages 3, 4 and 5 of plaintiff's supplemental reply memorandum.)

7. It must also be remembered that all of the substantive allegations of the Complaint herein as well as those in the affidavit of the Attorney General of the State of New York, which plaintiff's attorneys equate with proven fact, are only allegations the accuracy of which remains to be demonstrated. Neither this proceeding nor that brought by the Attorney General has progressed to a point where the Company has found it necessary to contest, either in a hearing or by affidavit, the

truth of the claims which have been asserted. Plaintiff's suggestion that the appointment of a receiver, such as took place in the case of *S.E.C. v. Manor Nursing Centers, Inc.*, 340 F. Supp. 913 (S.D.N.Y. 1971) mod. 458 F. 2d 1082 (2d Cir. 1972) only after a trial on the merits, be ordered in a class action upon the bare and unsupported statements in a pleading would constitute an unconstitutional violation of the Company's due process right to a hearing.

8. Southeastern has informed counsel that it desires to continue as a going concern for the benefit of its stockholders, both in the short run with its plan to make any dissatisfied shareholder whole and in the long run by operating as a real estate holding company. It plans to continue to issue periodic reports to the S.E.C. and its stockholders at appropriate intervals. Plaintiff should not be allowed to stand in the way of the accomplishment of either of these goals.

(Sworn to by Carl G. Bartholomaus, November 8, 1972.)

MEMORANDUM ORDER OF JUDGE KNAPP, DATED NOVEMBER 21, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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Plaintiff moves for an order declaring that this action be maintained as a class action, pursuant to F.R. Civ. P. 23(c)(1).

In this action, initiated in May of 1972, plaintiff seeks money damages and rescission on behalf of a class alleged to consist of all persons who purchased any of the publicly offered 200,000 shares of common stock of defendant Southeastern Properties, Inc. ("Southeastern" or the "Company") from underwriters or dealers involved in the public offering, or in the open market thereafter, and who have either retained their stock or sold it at a loss.

The amended complaint alleges that a public offering of 200,000 shares of Southeastern stock, at $5.00 per share, for a total of $1,000,000, was accomplished by false and misleading statements and omissions in a prospectus dated January 31, 1972. Three material misstatements or omissions are alleged:

MEMORANDUM ORDER OF JUDGE KNAPP, DATED NOVEMBER 21, 1972

(1) The prospectus failed to disclose pendency of merger negotiations between Southeastern and Apollo Industries, Inc.

(2) The prospectus failed to disclose that filing requirements of the States of New York and New Jersey had not been complied with, as a result of which the securities sold were not freely tradeable.

(3) The assets in the Southeastern financial statements were artificially inflated.

Violations are alleged of Sections 11, 12(2) and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Sections 352-c and 352-e of the New York General Business Law and common law principles. Jurisdiction is claimed to arise under Section 22 of the 1933 Act and Section 27 of the 1934 Act, as well as under the principles of pendent jurisdiction.

Plaintiff asserts that this action meets all the requirements of Rule 23(a) and (b)(3) and should therefore be maintained as a class action. Plaintiff contends:

(1) The class is so numerous that joinder of all members is impractical since the class consists of at least five hundred persons. Rule 23(a)(1).

MEMORANDUM ORDER OF JUDGE KNAPP, DATED NOVEMBER 21, 1972

(2) There are questions of law or fact common to the class in that, with the exception of individual damages and possibly with respect to the degree of individual reliance on the prospectus, all questions of law and fact are common to all members of the class. Rule 23(a)(2).

(3) The claims of the representative party are typical of the claims of the class and are not antagonistic to the claims of the remaining members of the class. Rule 23(a)(3).

(4) Plaintiff has and will fairly and adequately protect the interests of the class since he claims that he has and will prosecute this action vigorously. Rule 23(a)(4).

(5) The questions of law or fact common to members of the class predominate over any questions affecting only individual members since the only individual issues involve damages. Rule 23(b)(3).

(6) A class action is superior to other available methods for the fair and efficient adjudication of the controversy since each member of the proposed class, though allegedly injured, may not have been damaged to a degree which would have induced him to institute litigation solely on his own behalf. Rule 23(b)(3).

MEMORANDUM ORDER OF JUDGE KNAPP, DATED NOVEMBER 21, 1972

Defendant Southeastern opposes the motion on two principal grounds. Southeastern states that it is taking steps to effect an offer of complete rescission, and that a rescission offer in a securities fraud class action renders the proceeding moot. In addition, Southeastern contends that the pendency of a proceeding by the Attorney General of the State of New York provides a ground for ordering a stay of the present action.

The Court rejects the Southeastern's first contention in that it finds that no firm offer of rescission has been made. The second contention, however, presents a serious question as to whether this class action or the proceeding initiated by the New York Attorney General is the superior method for the fair and efficient adjudication of the controversy. Cf. *Eisen v. Carlisle & Jacquelin* (2d Cir. 1968), 391 F. 2d 555, 567.

In March 1972, the New York Attorney General's office apparently first informed Southeastern of its dissatisfaction with the filings made under the Blue Sky laws of New York. On September 12, 1972, the Attorney General obtained an order in the Supreme Court of New York pursuant to Article 23-A of the New York General Business Law (The Martin Act) which directs that certain

parties assertedly connected with Southeastern's offering appear on October 13, 1972 for examination by the Attorney General's staff and which enjoins any sale or transfer of Southeastern securities and any disposition of proceeds derived from the sale of such securities.

Plaintiff questions the adequacy of the Attorney General's proceeding as a vehicle for protecting the rights of the class he aspires to represent. He points out, among other things, that Southeastern has indicated an intention to challenge the Attorney General's jurisdiction.

The record now before the Court is inadequate to resolve the question thus presented.

The matter is therefore set down for a further hearing on Tuesday, December 12, 1972, at 4:00 P.M. in Room 36, for the purpose of resolving the question whether this action should be determined a class action, in light of the pendency of the Attorney General's proceeding. The parties are directed to invite a representative from the New York Attorney General's office to attend the hearing to aid the Court in its determination. If the

MEMORANDUM ORDER OF JUDGE KNAPP, DATED NOVEMBER 21, 1972

day and hour above specified should prove inconvenient to the Attorney General, the parties should so advise the Court.

Dated: New York, New York
November 21, 1972

So Ordered

s/ WHITMAN KNAPP
U.S.D.J.

LETTER TO JUDGE KNAPP FROM ARNOLD I. BURNS, DATED MARCH 30, 1973.

APR 3 1973

March 30, 1973

Honorable Whitman Knapp
United States Court House
Foley Square
New York, New York

Dear Judge Knapp: Re: Kaplan v. Southeastern, et al.

I am enclosing herewith a copy of the tender offer which is being mailed this day pursuant to the December 21, 1972 order of the Supreme Court of the State of New York to the owners of record of Southeastern's stock as of December 21, 1972. We will advise you when the tender offer has been completed and when those shareholders who have elected to accept the offer have been paid $5.00 per share for each share of the Company's stock which they have tendered pursuant to the offer.

It is my understanding that at the December 21, 1972 hearing held with respect to the above-captioned matter, you indicated that upon completion of the tender offer, the class action would be dismissed. Accordingly, when all shareholders who have tendered their shares have been paid, we will on notice to all parties submit a proposed Order dismissing the action.

Respectfully,

Arnold I. Burns

AIB/ec
enc.
cc: Assistant Attorney General, Thomas N. Dolan, Esq.
Messrs. Schatzkin & Cooper
Messrs. Hart & Hume
Howard Goldstein, Esq.
Kane, Kessler, Preiss, Rand & Provjansky, P.C.

NOTICE OF MOTION, PURSUANT TO RULE 37, DATED JUNE 27, 1973.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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SIRS:

Please take notice that upon the annexed affidavit of Edward Labaton and all the proceedings heretofore had herein the undersigned, pursuant to Rule 37 FRCP, will move this court at 9:00 A.M. on July 10, 1973 in Room 618, United States Courthouse, Foley Square, New York, N. Y., for an order compelling defendant Southeastern Properties, Inc. to answer interrogatories heretofore served on defendant by plaintiff on May 25, 1973, which defendant has failed to answer and for an order requiring said defendant to pay the plaintiff reasonable expenses incurred in obtaining such order on the ground

NOTICE OF MOTION, PURSUANT TO RULE 37, DATED JUNE 27, 1973

that such refusal was without substantial justification and for such other and further relief as may be just and proper.

Dated: June 27, 1973

Yours, etc.

SHATZKIN AND COOPER
By: s/ EDWARD LABATON
A Member of the Firm
Attorneys for Plaintiff
235 E. 42nd Street
New York, N. Y. 10017

TO:

Schwartz, Mermelstein, Burns,
Lesser & Jacoby, Esqs.
445 Park Avenue
New York, N. Y.

Hart and Hume, Esqs.
10 E. 40th Street
New York, N. Y.

Kane, Kessler, Preiss, Rand
& Proujansky, P.C.
60 Wall Street
New York, N. Y. 10005

Howard J. Goldstein, Esq.
1250 Broadway
New York, N. Y. 10001

AFFIDAVIT OF EDWARD LABATON IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

EDWARD LABATON, being duly sworn, deposes and says:

1. I am a member of the firm of Shatzkin and Cooper, attorneys for the plaintiff herein and I submit this affidavit in support of plaintiff's motion, pursuant to Rule 37(a) FRCP, to compel answers to interrogatories served on defendant on May 25, 1973. A copy of the interrogatories is annexed hereto as Exhibit A.

Prior Proceedings.

2. In May 1972, plaintiff commenced this action as a class action on behalf of persons who purchased securities of defendant Southeastern Properties, Inc. ("Southeastern") pursuant to a prospectus filed with the Securities and Exchange Commission and declared effective on January 31, 1972. The complaint alleged various misstatements in, and omissions from, the prospectus including

the failure to state that the prospectus had not been properly filed with the New York Attorney General's office and the failure to state that Southeastern had had merger negotiations with another corporation. (The complaint was thereafter amended to include allegations relating to the financial statements in the prospectus, the net result of which was that the assets were overstated and artificially inflated.) The validity of the complaint was tested in a motion by defendant Schneider & Baratta to dismiss before Judge Gurfein, which motion was denied.

3. By notice of motion dated July 31, 1972, plaintiff moved for class action determination. After adjournment of the motion at defendants request, the motion was opposed on the ground that defendants intended to make a rescission or tender offer pursuant to negotiations with the New York Attorney General's office, which had commenced an investigation into the Southeastern prospectus in March 1972 and an action in the New York Supreme Court in September 1972.

4. On November 21, 1972, this court entered a tentative order (Exhibit B hereto) neither denying nor granting plaintiff's motion for class action determination

but instead setting the motion down for further hearing for the purpose of resolving the question of whether the action should be determined a class action in the light of the pendency of the Attorney General's proceeding. At the hearing on December 20, 1972, the court and plaintiff were informed that an agreement of settlement had been reached in the New York proceeding whereby Southeastern would make a tender offer to its shareholders offering to repurchase the shares at $5.00 a share subject to certain conditions. The court indicated that the rescission offer when made might moot the case and therefore offered to plaintiff's counsel the alternative of denying the class action motion or deferring the decision pending the rescission offer. The court in either event indicated that counsel would be given leave to make a fee application based upon counsel's contention that this proceeding was a causative factor in the rescission offer. Plaintiff's counsel, by letter dated January 3, 1973 (Exhibit C hereto) accepted the second alternative proposed by the court, namely, deferral of the motion pending the rescission offer.

5. By letter dated February 8, 1973 (Exhibit D hereto), we requested that attorneys for defendant Southeastern send us copies of all documents sent to

shareholders and to advise us as to whether steps had been taken to notify shareholders whose securities were held in street name as to the tender offer. We received no response to the letter.

6. On April 3, 1973, we received a copy of a letter to the court advising that a tender offer (Exhibit E) had been made to Southeastern shareholders on March 30th. By letter dated April 6, 1973 (Exhibit F), we commented upon certain aspects of the tender offer. At the suggestion of the court (Exhibit G), we sent our comments to Justice Dickens of the Supreme Court of the State of New York (Exhibit H hereto). Illustrative of the problem as to notice to shareholders with regard to stock held in street name, is the fact that the named plaintiff in this case, Stuart D. Wechsler, held his stock in street name and received no notice whatever of the tender offer until I transmitted a copy of the tender offer to him. He never received any notice from any other source.

7. Copies of our correspondence to this court and to Justice Dickens were sent to all counsel but we received no response whatever, except a letter dated April 23, 1973 (a copy of which, together with the enclosure, is annexed hereto as Exhibit I). Exhibit I suggests that our communications to this court and to a Justice

of the Supreme Court "prejudiced" Southeastern's interest. The letter implied that we were interlopers interfering with provisions of an agreement worked out through extensive conferences between the defendants and the Attorney General. The letter ignores the critical fact that the culpability here lies exclusively with the defendants. But for that culpability, neither this action nor the Attorney General's action would have been commenced. As for our "profound ignorance of the pertinent facts", the defendants have done nothing to enlighten us or the investing public as to the pertinent facts either in the papers filed with the appropriate regulatory agencies or, indeed, in the tender offer made to purchasers of Southeastern stock.

The Interrogatories.

8. On May 8th, we requested from counsel for the defendants (a copy of which is attached hereto as Exhibit J) information concerning the tender offer. We received no response. We thereupon served interrogatories on May 25th (Exhibit A), and we have received no response to those interrogatories. The purpose of the interrogatories is to determine whether in fact it is appropriate to

renew argument on the class action determination or whether we should now withdraw the motion. If in fact there was an insubstantial response to the tender offer, then such response might be attributable to one or both of two factors: (a) inadequate disclosure in the tender offer of the true facts relating to the Southeastern offering, and (b) inadequate dissemination of the tender offer to the persons who purchased Southeastern stock. If the response is insubstantial, it could be appropriate to have this action declared a class action, so that the defrauded purchasers of Southeastern stock could receive some measure of relief. In the meantime, as we have noted in our prior papers, the defendants who made virtually no investment in Southeastern will, if the acceptance of the tender offer was incomplete, have virtually unfettered control over the public's money. As the prospectus itself noted, they have done this without any cash investment. At page 3 of the prospectus, Southeastern conceded that

> "Neither the Company nor any of its officers and directors have been required to put up any cash in the acquisition of the properties comprising almost all of the Company's assets and thus, investors should be aware

that they, rather than principals of the Company, are making the initial major cash investment in the Company's business."

9. In view of the foregoing, the motion to compel answers to interrogatories should be granted. Inasmuch as no excuse has been offered for the failure to answer the interrogatories or to move to strike or modify the interrogatories, in accordance with Rule 37, costs comprising reasonable attorneys' fees in prosecuting this motion should be imposed on Southeastern.

Wherefore, I respectfully request that defendant Southeastern be directed to answer the interrogatories and that plaintiff be awarded reasonable expenses, including counsel fees incurred in obtaining such order.

(Sworn to by Edward Labaton, June 27, 1973.)

EXHIBIT A, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--INTERROGATORIES TO DEFENDANT SOUTHEASTERN PROPERTIES, INC.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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Pursuant to Rule 33 of the Federal Rules of Civil Procedure, defendant Southeastern Properties, Inc. ("Southeastern") is required within thirty (30) days after service hereof to answer separately and fully in writing under oath each of the following interrogatories:

1. State the number of addressees to whom Southeastern caused to be mailed its tender offer dated March 30, 1973.

2. State what efforts, if any, were made by Southeastern to identify the beneficial owners of Southeastern stock as of the tender offer date.

3. State the number of shares of Southeastern held by banks, brokers or nominees on the record date for the tender offer.

4. State the number of shares tendered by holders of Southeastern stock.

EXHIBIT A, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

5. State:

(a) The number of advertisements placed with respect to the tender offer.

(b) State the dates such advertisements were placed.

(c) State the publications in which said advertisements were placed.

(d) State the size of each advertisement.

(e) State the content of each advertisement.

6. State the number of responses received by Southeastern or its agents in response to the advertisement referred to in ¶5.

Dated: May 25, 1973

Yours, etc.

SHATZKIN AND COOPER
By: s/ EDWARD LABATON
A Member of the Firm
235 E. 42nd Street
New York, N. Y. 10017

To:

Schwartz, Mermelstein, Burns, Lesser & Jacoby, Esqs.
445 Park Avenue
New York, N. Y. 10022

Howard J. Goldstein, Esq.
1250 Broadway
New York, N. Y. 10001

Kane, Kessler, Preiss, Rand & Proujansky, P.C.
60 Wall Street
New York, N. Y. 10005

Hart & Hume, Esqs.
10 E. 40th Street
New York, N. Y. 10017

EXHIBIT B, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
MEMORANDUM ORDER OF JUDGE KNAPP, DATED NOVEMBER
21, 1972.

(Reproduced, *supra*, at pages 192a to 197a.)

EXHIBIT C, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED JANUARY 3, 1973.

January 3, 1973

Honorable Whitman Knapp
United States District Court
Southern District of New York
Foley Square
New York, N. Y. 10007

Re: Wechsler v. Southeastern Properties
72 Civ. 1813
(Our File No. 5112)

Dear Judge Knapp:

In the argument of the class action motion held on December 20, 1972, your Honor offered two alternatives to plaintiff: 1. An immediate decision denying the class action motion, or 2. Deferral of decision pending the determination of the state court case and the rescission offer thereunder.

In connection with the second alternative, you indicated that if the rescission offer were consummated, you would hold a hearing on a fee application based on plaintiff's contention that the bringing of the class action was a causative factor in the company's ultimate determination to make a rescission offer.

We have decided to accept the second alternative and in connection therewith will request that the attorneys for Southeastern keep us informed of the status of the state court proceeding.

Respectfully yours,

EL:vc

Edward Labaton

cc: All Counsel

EXHIBIT D, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED FEBRUARY 8, 1973.

February 8, 1973

Schwartz, Mermelstein, Burns,
Lesser & Jacoby, Esqs.
445 Park Avenue
New York, N. Y.

Att: Carl Bartholomaus, Esq.

Re: Wechsler v. Southeastern Properties

Gentlemen:

In accordance with my prior requests, would you please send to me copies of all documents sent to the shareholders of Southeastern, particularly with reference to the rescission offer made pursuant to the state court action brought by the Attorney General.

Would you please advise me as to whether any steps have been taken to notify shareholders whose securities are held in street name or whose addresses may have changed of the terms of the rescission offer.

Very truly yours,

EL:vc

Edward Labaton

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED MARCH 30, 1973.

Southeastern Properties, Inc.

March 30, 1973

TO OUR STOCKHOLDERS:

Enclosed are the tender offer papers referred to in the Company's letter of December 20, 1972. Since the offer expires on April 30, 1973, it is important that you give this matter your prompt attention.

The tender offer papers include a copy of the December 21, 1972 Court Order, referred to in the Company's December 20, 1972 letter, pursuant to which this offer is being made; the Company's letter to its stockholders offering to purchase its shares and the most recent 10-Q report filed with the Securities and Exchange Commission covering the Company's financial operations for the nine month period ended January 31, 1972; and a letter of transmittal with instructions for its completion to be forwarded with your shares, should you decide to accept the offer.

While the staff of the Securities and Exchange Commission has given the Company a "no action" letter with respect to making the offer without a registration statement being in effect, the issuance of the letter by the staff of the Commission

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

in no way involves a determination as to the merits of the offer. Accordingly, each stockholder should make an independent evaluation of the offer with the assistance of his broker, accountant or attorney, if such advise is necessary. The Company will be happy to answer any questions about the tender offer papers.

It is important that any stockholder of record, who holds stock of the Company for the account or beneficial interest of another, promptly transmit copies of the tender offer papers to the person or persons for whom the stock is so held.

Sincerely,

Anthony J. DeMatteo
President

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

Southeastern Properties, Inc.

March 30, 1973

Offer of Southeastern Properties, Inc. (the "Company") to Purchase up to 200,000 Shares of its Common Stock, $.01 Par Value, at the Price of $5.00 Per Share

To the Holders and Beneficial Owners of Common Stock of the Company:

The Company hereby offers to purchase up to 200,000 shares of its Common Stock, $.01 par value (the "Shares"), which initially were sold by the Company pursuant to its Prospectus dated January 31, 1972 (the "Prospectus"), at the price of $5.00 per tendered share net to the seller, without deduction of brokerage commissions or transfer taxes. This offer to purchase the Shares (the "Offer") is subject to the provisions set forth herein and in the enclosed Letter of Transmittal.

THIS OFFER WILL EXPIRE 30 DAYS FROM THE DATE OF THIS LETTER AT 5:00 O'CLOCK P.M., EASTERN STANDARD TIME ON APRIL 30, 1973 (SUCH DATE AND TIME BEING HEREINAFTER REFERRED TO AS THE "EXPIRATION DATE").

THIS OFFER IS BEING MADE TO THE HOLDERS OF RECORD OF THE COMMON STOCK OF THE COMPANY AS OF THE CLOSE OF BUSINESS ON DECEMBER 21, 1972. RECORD HOLDERS WHO ARE NOT THE BENEFICIAL OWNERS OF SUCH STOCK SHOULD DELIVER THIS LETTER AND THE ENCLOSED LETTER OF TRANSMITTAL TO THE BENEFICIAL OWNERS.

Stockholders who tender their Shares pursuant hereto may withdraw the Shares so tendered prior to the close of business on April 30, 1973.

Number of Shares to be Purchased. The Company will purchase any and all Shares tendered, if duly tendered prior to the Expiration Date.

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

Purpose of the Offer. The Board of Directors, in the exercise of its business judgment, has decided to make the Offer as a means of resolving a dispute with the New York Attorney General concerning the propriety of the Company's "blue sky" filings with the Attorney General relating to the Company's public offering of its securities in New York. The Company has entered into a consent order with the New York Attorney General, a copy of which is enclosed. The order, which has been filed with the New York State Supreme Court, requires that the Company utilize $478,500 of its current funds and all funds realized from the sale of its real estate and to make the Offer as soon as $1,000,000 is available. Upon consummation of the Offer the order will be deemed to vacate the provisions of a prior order which, among other things, prohibited the Company and others from disposing of, transferring or trading the Common Stock of the Company. Any Shares not purchased by the Company pursuant to the Offer will, after the Expiration Date, be freely tradeable; the New York Attorney General has advised that, based on the information presently available to him, he will not thereafter assert any objection to brokers and dealers which trade or effectuate transfers of the Company's Common Stock. However, the Company is in no position to give any assurance that a public market for the Shares will develop or, if any such market develops, that it will not be a "thin" market. To the best knowledge of the Company, the Company's Common Stock has not traded in New York since March 22, 1972.

Source of Funds. The $1,000,000 being utilized to fund the Offer was obtained from the following sources: $300,000 available from the proceeds of the offering; and the balance from the sale of certain realty of the Company, the return by the Underwriter of commissions and discounts paid to the Underwriter in respect of the public offering, and loans.

Payment for Tendered Shares. Payment for all Shares duly tendered and purchased pursuant to the Offer will be made by the Company within thirty days after the Expiration Date.

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

Information Regarding the Company Stockholders should refer to the communications from the President of the Company to stockholders dated March 27, 1972, May 19, 1972 and August 14, 1972 concerning the Company's dispute with the New York Attorney General and certain realty contracts entered into by the Company. Attached hereto is the Company's 10-Q report filed with the Securities and Exchange Commission covering the financial operations of the Company for the nine months ended January 31, 1973. At present the Company owns all of the parcels described in the Prospectus other than parcels 10, 16, 17, 19 and portions of parcels 2, 5 and 15. Since the Company is not in a position to know the results of the Offer, there can be no assurance that the Company will be able to continue operations after consummation of the Offer. If it is possible to continue operations at such time, the Company can make no assurance that necessary financing can be obtained on terms favorable to it.

Procedure for Tendering Shares. To tender Shares hereunder, certificates for Shares, together with a properly completed and executed Letter of Transmittal, should be transmitted to the Depository or to the tendering stockholder's own broker, bank or trust company for transmittal to the Depository at the address below:

Depository:

Bankers Trust Company
P. O. Box 4767
Grand Central Station
New York, New York 10017

Holders of Shares who have Shares held by or registered in the name of a broker or dealer are urged to contact their broker or dealer if they desire to tender such Shares.

For the convenience of stockholders whose certificates are not immediately available the Letter of Transmittal sets forth a procedure for tendering Shares without concurrent deposit of certificates.

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

Commissions. The Company will not pay brokers or dealers any commissions for assisting stockholders in tendering Shares.

* * *

While the Board of Directors of the Company has authorized this Offer, neither the Board of Directors nor the management of the Company recommends that stockholders either tender or not tender any of their Shares in response to the Offer. Nevertheless, as above indicated, the Company has no way of knowing whther a public market for the Shares will develop after consummation of the Offer or, if any market develops, that it will not be "thin"; stockholders should bear these factors in mind when making their decision whether to accept or reject the Offer.

Questions or requests for assistance or for additional copies of this letter and the Letter of Transmittal may be directed to the Depository or your broker or bank.

Very truly yours,

SOUTHEASTERN PROPERTIES, INC.

Anthony J. DeMatteo,
Chairman of the Board
and President

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT UNDER SECTION 13 OR 15 (d)
OF THE SECURITIES EXCHANGE ACT OF 1934.

For Quarter Ended January 31, 1973 Commission File Number 2-41669

SOUTHEASTERN PROPERTIES, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

No. 62-0849893
(I.R.S. Employer Identification No.)

6503 Slater Road, Chattanoooga, Tennessee
(Address of principal executive offices)

37421
(Zip Code)

Registrant's Telephone Number, including area code (615) 892-7256

Indicate by check mark whether the registrant has filed all annual, quarterly and other reports required to be filed with the Commission within the past 90 days and in addition has filed the most recent annual report required to be filed.

YES X NO ___

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON FORM 10-Q

A. Summarized Financial Information

Company for which report is filed: SOUTHEASTERN PROPERTIES, INC.

Profit and Loss Information:	For the 9 Months Ended: Jan. 31, 1973 (Current Year)	Jan. 31, 1972 (Preceding Year)
1. Gross sales	$ 739,150.00	$ 130,500.00
2. Operating revenues: Interest income	11,912.54	none
3. Total of captions 1 and 2	$ 751,062.54	$ 130,500.00
4. Cost and expenses: Selling, General and Administrative expenses	$ 660,574.81	$ 135,581.03
Interest expense	27,494.81	21,865.31
5. Income (or loss) before taxes on income and extraordinary items	$ 62,992.92	$(26,946.34)
6. Provision for taxes on income	none	none
7. Minority interest	none	none
8. Income (loss) before extraordinay items	$ 62,992.92	$(26,946.34)
9. Extraordianry items, less applicable income tax	none	none
10. Net Income (or loss)	$ 62,992.92	$(26,946.34)
11. Earnings per share ~~(loss)~~	.15	
Common shares outstanding Jan. 31, 1973--435,000		
Earnings per share (loss)		(.12)
Common share outstanding Jan. 31, 1972--235,000 Retroactive from Jan., 1972		
12. Dividends per share	none	none

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON FORM 10-Q

B. Capitalization and Stockholders' Equity
January 31, 1973
(Date)

Debt:		Amount
Short-term loans, notes, etc.		$ none
Long-term debt, including parenthetically portion due within one year (due in one year)		83,225.32 (42,440.95)
Total debt		$ 125,666.27
Deferred credits:		
Minority interest		none
Stockholders' equity:		
	Shares issued or Outstanding	Amount
Preferred stock:	none	
Common stock:	435,000	$ 4,350.00
Capital in excess of par value		1,998,233.00
Retained earnings:		
Balance at beginning of current fisical year (deficit)		(60,250.00)
Prior period adjustments, if any		none
Net income (or loss)		62,992.92
Dividends		none
Balance at end of interim period		2,742.92
Treasury stock		none
Total Stockholders' Equity		$2,005,325.92

C. Sales of Unregistered Securities

NONE

none

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SOUTHEASTERN PROPERTIES, INC.
(Registrant)

Date February 13, 1973

(Signature)
Anthony J. DeMatteo,
President

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

Offer Expires at 5:00 p.m., Eastern Standard Time,
on April 30, 1973

LETTER OF TRANSMITTAL

Tender of Common Shares, $.01 Par Value, of
Southeastern Properties, Inc. in Acceptance
of Offer to Purchase dated March 30, 1973.

Important: This form should be completed and sent to the Depositary named below, together with your certificates for the Common Shares, $.01 Par Value, of Southeastern Properties, Inc.

Your Broker or Bank will Assist you in Completing this Form.

To Depositary:

Bankers Trust Company
P. O. Box 4767
Grand Central Station
New York, New York 10017

Dear Sirs:

The undersigned shareholder hereby acknowledges receipt of, and accepts (with respect to the shares deposited herewith or tendered hereby), the Offer dated March 30, 1973 (the "Offer") of Southeastern Properties, Inc. (the "Company"), to purchase Common Shares, $.01 Par Value, of the Company (the "Shares") upon the terms and conditions set forth therein and in this Letter of Transmittal, including the accompanying instructions, and in accordance therewith the undersigned hereby delivers or agrees to deliver to the above-named Depositary for such transfer and sale to the Company Shares as indicated below:

Certificate Number(s)	Total Number of Shares Enclosed	Total Number of Shares Tendered if Less Than All*

*All Shares represented by certificates listed are deemed to have been tendered unless otherwise indicated in this space.

The undersigned shareholder understands that a tender is not made in acceptable form until timely receipt by the Depositary of this Letter of Transmittal, together with all accompanying evidences of authority required by the accompanying instructions, in form satisfactory to the Company. All questions as to tenders, including the date of receipt of a tender, the propriety of execution thereof and other questions as to the eligibility or acceptability of any tender, will be determined by the Company, and its determination shall be final and binding.

The undersigned shareholder hereby warrants that the undersigned has full and complete authority to sell, assign and transfer the above-mentioned Shares, that said Shares are not subject to any adverse claims, and that the Company will acquire good and marketable title thereto, free and clear of all liens, pledges, charges and encumbrances, when the same are purchased by it. The

undersigned will, upon request, execute any additional documents necessary or desirable to complete the sale, assignment and transfer of the above-described Shares.

All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned shareholder, and all obligations of the undersigned hereunder shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

If the certificates representing the Shares tendered hereby are not delivered herewith, a member firm of a national securities exchange or of the National Association of Securities Dealers, Inc. or a commercial bank or trust company in the United States must guarantee in the space hereinafter provided or in an appropriate letter or telegram that such certificates will be deposited with the Depositary no later than eight business days after the expiration date of the Offer, and must in this Letter when delivered confirm that the tender of such Shares is in compliance with Rule 10b-4 under the Securities Exchange Act of 1934. See Instruction 4 accompanying this Letter.

ASSIGNMENT AND RELEASE

In consideration of the Offer and the payment of the purchase price specified therein, the undersigned hereby (a) sells, assigns and transfers unto the Company or its order the Shares of the Company represented by the previously-described certificates which the Company is to purchase under the terms of the Offer, and hereby irrevocably constitutes Continental Stock Transfer Company as attorney to effectuate the transfer of said Shares on the books of the Company with full power of substitution in the premises and (b) release and discharge the Company and its assigns (whether by merger, sale of assets or stock, or otherwise) and its officers and directors from all manner of actions, causes of action, suits, claims and demands which the undersigned may have for any reason whatsoever against all or any of them.

The undersigned understands and agrees that the Depositary shall not be liable hereunder for any act or omission of the Company.

Very truly yours,

Dated: _____, 1973.

_____

_____

Signature(s) guaranteed

_____

(see instructions 2 and 3)

Signature(s) of registered holder(s). (Must be signed by registered holder(s) exactly as name(s) appears in certificate(s) or by person(s) authorized to become registered holder(s) by certificates and documents transmitted or to be transmitted in the case of guaranteed certificates).

Print Name _____

and Address _____

_____

Zip Code

Telephone No. _____
(Area Code)

Social Security No. _____

THE INSTRUCTIONS ACCOMPANYING THIS LETTER OF TRANSMITTAL MUST BE FOLLOWED

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

TO BE USED ONLY IF CERTIFICATES ARE NOT TRANSMITTED HEREWITH. CERTIFICATE NUMBERS MUST BE INDICATED IN APPROPRIATE BOX ON PAGE ONE OF THIS LETTER OF TRANSMITTAL.

The undersigned,

- ☐ a member firm of a national securities exchange or of the National Association of Securities Dealers, Inc.
- ☐ a commercial bank in the United States,
- ☐ a trust company in the United States,

guarantees to deliver to the Depositary (in proper form for transfer) certificates for the Shares tendered by this Letter of Transmittal not later than eight business days after the expiration date of the Offer; and confirms that the tender of such shares is in compliance with Rule 10b-1 under the Securities Exchange Act of 1934.

Sign Here .....
Authorized Signature

Unless otherwise indicated under Special Delivery Instructions, the check for the purchase price will be payable to the order of the person(s) executing the Assignment on page two of this Letter of Transmittal and mailed to the address shown on page two. Similarly, unless indicated under Special Delivery Instructions, if the Shares tendered, or any portion thereof, are not purchased by the Company, the certificates representing such Shares (and accompanying documents, as appropriate) will be returned to the person(s) executing the Assignment on page two of this Letter of Transmittal at the address shown on page two.

SPECIAL DELIVERY INSTRUCTIONS

To be completed only if certificates are to be returned, or check is to be mailed, to other than the person(s) executing the Assignment on page two of this Letter of Transmittal.

To: .....
Print Name

.....
Street Address

.....
City and State Zip Code

DO NOT WRITE IN THIS SPACE

Shares Received:	Date Mailed:	Processed By:
Shares Accepted:	Check No.	Amount $
Shares Returned:	Certificate No.	Mail No.

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

INSTRUCTIONS

FORMING PART OF TERMS AND CONDITIONS OF THE OFFER

1. The Letter of Transmittal, completed and executed, must be used in connection with a tender of Shares. Except as stated in paragraph 4 below, the Letter of Transmittal and certificates for Shares to be rendered must be received by the Depositary, at the address set forth in the Letter of Transmittal, in satisfactory form, in order to make an effective tender, and must be so received on or before 5:00 p.m., Eastern Standard Time, April 30, 1973. The method of delivery of all documents is at the option and risk of the shareholder, but if delivery is by mail, registered and insured mail is suggested. An envelope containing the name and address of the Depositary is enclosed herewith for your convenience.

2. If the Letter of Transmittal is signed by the registered holder of the certificates transmitted, the signature must be exactly the same as the name appears on the face of the certificates, without alteration, enlargement or any change whatsoever. If the tendered certificates are owned of record by two or more joint owners, all such owners must sign the Letter of Transmittal. If the Letter of Transmittal is signed by trustees, executors, administrators, guardians, attorneys-in-fact, corporate officers or others acting in a fiduciary or representative capacity, such persons should so indicate when signing and proper evidence of their authority so to act must be submitted. If the Letter of Transmittal is signed by the registered holders of the certificates transmitted therewith, the certificates transmitted need not be endorsed or accompanied by any instrument of assignment or transfer other than this Letter of Transmittal. However, signatures on the Letter of Transmittal must be guaranteed by a commercial bank or trust company located in or having a New York City correspondent or by a member organization or a registered national securities exchange. Your broker will assist you with respect to guarantee of signatures.

3. If the Letter of Transmittal is signed by a person other than the registered holder of the certificates transmitted therewith, the certificates must be endorsed for transfer to the person making the tender or accompanied by appropriate stock powers, in either case signed exactly as the name or names of the registered owner or owners appear on the certificates. If the Letter of Transmittal or certificates or stock powers are signed by trustees, executors, administrators, guardians, attorneys-in-fact, corporate officers or others acting in a fiduciary or representative capacity, such persons should so indicate when signing and proper evidence of their authority so to act must be submitted. Signatures on stock certificates or separate stock powers required by this instruction must be guaranteed by a commercial bank or trust company located in or having a New York City correspondent or by a member organization or a registered national securities exchange. In addition, signatures on the Letter of Transmittal must be guaranteed. Your broker will assist you with respect to guarantee of signatures.

4. Shares represented by certificates which are not immediately available may be tendered by commercial banks or trust companies in the United States or by brokers acting on behalf of their customers if the bank, trust company or broker will execute the guarantee provided, and if the Depositary shall have received from such bank, trust company or broker prior to the expiration of the Offer either the properly completed Letter of Transmittal not accompanied by certificates or a letter or telegram giving the name

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

and adress of the holder and the number of tendered shares and guaranteeing delivery of the tendered shares (in which case the Shares to which the Letter of Transmittal, letter or telegram relates shall be deemed properly tendered as of the date of receipt of the Letter of Transmittal, letter or telegram). The adequacy of such guarantee will be determined solely at the discretion of the Company. Certificates surrendered pursuant to the guarantee of a bank, trust company or broker must be preceded or accompanied by a properly executed Letter of Transmittal (which confirms that the tender of such Shares is in compliance with Rule 10b-4 under the Securities Exchange Act of 1934).

5. Transfer tax stamps should not be affixed to the tendered certificate. The Company will pay any taxes incident to the transfers to it, except that if payment is to be made to other than the registered holder, an additional transfer is involved and in such case, or in case certificates are tendered by other than the registered holder without proof of payment of prior transfer taxes, applicable taxes will be deducted from the purchase price.

6. If the shareholder's Shares are registered differently on several certificates, it will be necessary for him to complete, sign and submit as many separate Letters of Transmittal as there are different registrations of his Shares.

7. The Company reserves the right if it so elects in its absolute discretion to waive any defect or irregularity in the form of acceptance as described herein or the Offer or in the tender of Shares in acceptance thereof as provided for herein, and upon such waiver may treat and receive any such defective or irregular acceptance and/or tender as if no such defect or irregularity were present.

8. Additional copies of the Offer and this Letter of Transmittal may be obtained from the Depositary at the address previously referred to in the Letter of Transmittal. If you have any questions as to how to accept this Offer, see your broker immediately.

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse, Borough of Manhattan, City and State of New York, on the 21st day of December, 1972.

P R E S E N T :

HON. THOMAS DICKENS

Justice.

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

SOUTHEASTERN PROPERTIES, INC., ANTHONY J. DeMATTEO, AND WILLIAM L. MANNING,

Defendants.

41773-72

CONSENT INJUNCTION

The plaintiff having brought this action by the service of a summons and verified complaint upon the named defendants for a judgment permanently enjoining and restraining said defendants from violating the provisions of Article 23-A of the General Business Law of the State of New York.

NOW, on reading and filing the summons dated the 15th of December, 1972 and the complaint herein, verified the 19th day of December 1972, the affidavit of THOMAS N. DOLAN, Assistant Attorney General, sworn to the 19th day of December 1972, the order of Mr. Justice Joseph DiFede dated September 12, 1972 the affidavit of Assistant Attorney General THOMAS N. DOLAN dated September 7, 1972, and the consent of the defendants, and due deliberation having been had, it is

On motion of LOUIS J. LEFKOWITZ, Attorney General of the State of New York attorney for plaintiff,

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

ORDERED, ADJUDGED AND DECREED that the above defendants be restrained and enjoined permanently from offering for sale or selling securities consisting primarily of participation investments in a real estate venture, within and from the State of New York as principal or agent without first filing an offering statement or prospectus with the Department of Law where required by Section 352-e of the General Business Law of the State of New York and from any and all acts in aid or furtherance thereof; and it is further

ORDERED, ADJUDGED AND DECREED that the above defendants be restrained and enjoined permanently from violating the provisions of Article 23-A of the General Business Law of the State of New York and from any and all acts in aid or furtherance thereof; and it is further

ORDERED, ADJUDGED AND DECREED that Southeastern Properties, Inc. within (21) days of the signing of this order deposit the sum of $478,000.00 in a bank approved by the Attorney General to be held in a Special Account to fund the tender offer to the present owners of Southeastern stock; and it is further

ORDERED, ADJUDGED AND DECREED that any and all funds subsequently received by Southeastern Properties, Inc. from the sale of any of its properties also be deposited in the above referred account until such time as this fund has $1,000,000 on deposit; and it is further

ORDERED, ADJUDGED AND DECREED that Southeastern Properties Inc., in accordance with the terms of a November 30, 1972 no action letter from the Securities and Exchange Commission, attached to this Order as Exhibit "A", and within thirty (30) days of the date when it has sufficient funds deposited, as provided herein, and available to purchase all of the oustanding 200,000 shares initially sold to the public pursuant to a prospectus ordered effective with the Securities and Exchange Commission on January 31, 1972, transmit to each stockholder of record

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

or beneficial owner thereof on the date of entry of this Order the documents in the form of Exhibit "B" annexed to and made part of this Order which offer to purchase for $5.00 per share any and all such 200,000 shares of Southeastern's common stock; and it is further

ORDERED, ADJUDGED AND DECREED that in the event this $1,000,000 fund has not been raised and deposited and the tender offer made within six (6) months from the date of this order or as may be extended by this Court then this Court will upon request of the Attorney General appoint a receiver of all of the assets of Southeastern Properties, Inc.; and it is further

ORDERED, ADJUDGED AND DECREED that, except as required to fulfill the provisions of this order, the restraining provisions barring the offer, sale and transfer of the securities of Southeastern Properties, Inc. to the public and the transfer or the disposition of funds derived from the proceeds of the sale of such securities as contained in the Order of Mr. Justice DiFede dated September 12, 1972 remain in full force and effect until the tender offer is completed at which time all restraining provisions with respect the defendants herein shall be deemed vacated in their entirety; and it is further

ORDERED, ADJUDGED AND DECREED that the motion of Southeastern Properties, Inc. with respect to said September 12, 1972 Order be withdrawn; and it is further

ORDERED, ADJUDGED AND DECREED that defendants Southeastern Properties, Inc. Anthony J. DeMatteo, and William L. Manning, cease and desist from any and all business transactions with Wilmart Associates, Inc. or William Held, except for transactions contemplated by extant, binding and valid contractual relationships; and it is further

ORDERED, ADJUDGED AND DECREED that the Attorney General of the State of New York may make such further application under the provisions of this order, judgment and decree or maintain

EXHIBIT E, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

any action for such other and further relief as plaintiff may be advised is proper and necessary for the enforcement of this order, judgment and decree, all pursuant to Article 23-A of the General Business Law of the State of New York and all other provisions of law applicable thereto; and it is further

ORDERED, ADJUDGED AND DECREED that costs be awarded plaintiff in the amount of Two Thousand ($2,000.00) Dollars pursuant to the authority of § 8303(a)(6) of the Civil Practice Law and Rules.

E N T E R

J. S. C.

FILED

DEC 22 1972

COUNTY CLERK'S OFFICE
NEW YORK

Clerk

COUNTY CLERK'S OFFICE
NEW YORK

EXHIBIT F, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED APRIL 6, 1973.

SHATZKIN · AND · COOPER · ATTORNEYS
235 EAST 42ND STREET · · NEW YORK, N. Y. 10017 · · MURRAY HILL 7-8800

April 6, 1973

Honorable Whitman Knapp
United States District Court
Southern District of New York
U. S. Courthouse
Foley Square
New York, N.Y. 10007

Re: Wechsler v. Southeastern
Properties, Inc.
72 Civ. 1813

Dear Judge Knapp:

On April 3, 1973 we received a copy of a letter to your Honor from the attorneys for Southeastern Properties, Inc. dated March 30, 1973, together with a copy of the tender offer made to shareholders. We have the following comments with respect to the letter and the tender offer:

The letter states that at the hearing held before your Honor in December you indicated that "upon completion of the tender offer the class action would be dismissed". That statement is inaccurate as the correspondence with the court indicates. On January 3, 1973 I sent to your Honor a letter, copy of which is enclosed, indicating that we consented to a deferral of the class action determination until the tender offer. Some counsel took issue with some of the statements made in my letter (see, e.g., letter of the attorneys for Monarch Funding Corporation, a copy of which is enclosed, dated January 8, 1973, in which they indicated that upon conclusion of the tender offer your Honor would indicate your "willingness to entertain an application on the issue of fees") but none suggested that there would be dismissal of the action after the tender offer was made.

The proposal that the action be dismissed at this time is totally inappropriate, particularly in light of the comments which follow.

EXHIBIT F, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

SHATZKIN · AND · COOPER

Even if commissions were paid to tendering brokers, in view of the fact that much of the Southeastern stock is presumably held in street name, we believe that a good faith effort should be made to identify all beneficial owners of shares so that they can be assured of notice of the tender offer. This can be done by a court order directed to brokers, banks and other nominees directing that they supply names and addresses of beneficial owners for whom they hold Southeastern stock. This has been done in other cases, including cases in which we participated (see Feder v. Harrington, CCH Fed. Sec. L. Rep. ¶93,687). In addition, it might be appropriate to provide newspaper advertisements in the Wall Street Journal and the New York Times to advise those persons not reached by the mailing.

Since many shares are presumably held in street name or other nominee accounts, the period in which to accept the tender offer should be extended for at least another 30 days.

In connection with the comments made herein, we transmit a copy of our letter dated February 8, 1973 to Southeastern's attorneys, in which we asked whether any steps would be taken to notify shareholders whose securities are held in street name or whose addresses may have changed of the terms of the rescission offer. The only "effort" made to reach beneficial owners is the request in the tender offer that record holders deliver the letter of transmittal and the tender offer to beneficial owners. Any person with experience in matters of this kind knows that this is patently inadequate notice to beneficial owners.

Respectfully,

EL:vc
Encl.

Edward Labaton

cc: All Counsel

EXHIBIT G, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED APRIL 10, 1973.

UNITED STATES DISTRICT COURT
CHAMBERS OF
JUDGE WHITMAN KNAPP
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

April 10, 1973

Edward Labaton, Esq.
Shatzkin and Cooper
235 East 42nd Street
New York, New York 10017

Re: Wechsler v. Southeastern
Properties, Inc. - 72 Civ. 1813

Dear Mr. Labaton:

Judge Knapp has received your letter of April 6, 1973, and has asked me to inform you that you should address the questions raised in your letter to the Justice of the New York Supreme Court before whom the Attorney General's action is now pending. When that action has been resolved and payment has been made pursuant to the recission offer, Judge Knapp will hear any application you may wish to make in accord with your letter to him of January 3, 1973.

Sincerely yours,

Wendell Goddard

Wendell Goddard
Law Clerk to Judge Knapp

cc: All Counsel

EXHIBIT H, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED APRIL 11, 1973.

SHATZKIN · AND · COOPER · ATTORNEYS
235 EAST 42ND STREET · · NEW YORK, N. Y. 10017 · · MURRAY HILL 7-8800

April 11, 1973

Honorable Thomas Dickens
Supreme Court of the
State of New York
60 Centre Street
New York, N. Y.

Re: People v. Southeastern
Properties, Inc.
41772/72

Dear Justice Dickens:

We are the attorneys for Stuart Wechsler and on his behalf we have commenced a class action in the United States District Court for the Southern District of New York against Southeastern Properties, Inc. and others connected with the public offering of Southeastern securities made in March 1972. Our motion for a class action determination has been held in abeyance pending the completion of the rescission offer directed by your Honor on December 21, 1972. We received a copy of the rescission offer on April 3 and on April 6 we sent some comments to Judge Knapp, who in turn informed us that we should address our questions to your Honor.

We believe that the notice to purchasers of Southeastern stock is inadequate. In view of the fact that much of the Southeastern stock is presumbably held in street name, we believe that a good faith effort should be made to identify all beneficial owners of shares so that they can be assured of notice of the tender offer. This can be done by a court order directed to brokers, banks and other nominees directing that they supply names and addresses of beneficial owners for whom they hold Southeastern stock. This has been done in other cases, including cases in which we participated (see Feder v. Harrington, CCH Fed. Sec. L. Rep. ¶93,687).

We have noticed one small advertisement not more than two columnar inches in the New York Times. We would propose that the advertisements be at least two columns wide by at least 5 inches high so that it would be brought to the attention of a large number of Southeastern security holders.

EXHIBIT H, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

In this connection, in another class action in which we participated the advertisements were required to be at least two columns wide by 7 inches.

Since many shares are presumably held in street name or other nominee accounts, the period in which to accept the tender offer should be extended for at least another 30 days.

In connection with the comments made herein, we transmit a copy of our letter dated February 8, 1973 to Southeastern's attorneys, in which we asked whether any steps would be taken to notify shareholders whose securities are held in street name or whose addresses may have changed of the terms of the rescission offer. The only "effort" made to reach beneficial owners is the request in the tender offer that record holders deliver the letter of transmittal and the tender offer to beneficial owners and minimal advertising of the tender offer. Any person with experience in matters of this kind knows that this is patently inadequate notice to beneficial owners.

Respectfully,

Edward Labaton

EL:vc
Encl.

cc: Hon. Whitman Knapp
Thomas N. Dolan, Esq.
All Counsel in Southeastern
v. Wechsler

EXHIBIT I, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED APRIL 23, 1973.

SCHWARTZ, MERMELSTEIN, BURNS, LESSER & JACOBY
445 PARK AVENUE NEW YORK 10022

(212) 980-3200

MILTON E. MERMELSTEIN
ARTHUR H. SCHWARTZ
ARNOLD I. BURNS
STANLEY T. LESSER
HERBERT P. JACOBY
MORTIMER N. FELSINGER
JAY H. SCHAFRANN
STANLEY GARRETT
EVERETT A. FROHLICH
ERWIN CHEROVSKY
STUART G. SCHWARTZ
SHELDON W. HALPERN
JOHN L. AMABILE
HARVEY FRANK
HERBERT F. FISHER
LAWRENCE C. GIBBS
JEFFREY A. MOROSS

NATHAN BURKAN
(1900-1936)
SCHWARTZ & FROHLICH
(1936-1970)
CABLE "MERMLAWS"

GEORGE J. FELDMAN
COUNSEL

April 23, 1973

Shatzkin & Cooper, Esqs.
232 East 42nd Street
New York, N.Y. 10017

Re: Wechsler v. Southeastern
Properties, Inc., et al.

Gentlemen:

We are enclosing with this letter our letter dated this date to Judge Knapp in the above matter. This letter will serve to advise you that in connection with our proposed motion to dismiss the action pursuant to the Court's instructions made at the December 21, 1972 hearing, we have under consideration a motion for the imposition of costs on plaintiff under Section 54(d) of the Federal Rules of Civil Procedure. Also, in view of your activities referred to in our letter to Judge Knapp and the services which Southeastern Properties, Inc. and this firm may be compelled to perform in order to contest such activities, we also are considering moving, under 28 U.S.C. 1927, for the imposition of costs on you on the ground that you have "multiplie[d] the proceedings in [this]case as to increase costs unreasonably and vexatiously."

Respectfully submitted,

Carl B. Bartholomaus

Carl Bartholomaus

tt
Enc.

cc: All counsel in the
instant case

EXHIBIT I, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

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445 PARK AVENUE NEW YORK 10022

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CABLE: "HERMLAWS"

GEORGE J. FELDMAN
COUNSEL

April 23, 1973

Honorable Whitman Knapp
United States District Court
United States Courthouse
New York, New York 10007

Re: Wechsler v. Southeastern Properties, Inc., et al.

Dear Judge Knapp:

As counsel to Southeastern Properties, Inc. in the above matter, we regret that we must burden the Court with a response to the letters of Shatzkin & Cooper to you dated April 6, 1973 and to Judge Thomas Dickens of the New York Supreme Court dated April 11, 1973, and April 16, 1973, but we do not want our client's interests to be prejudiced by appearing to acquiesce in the statements made by Shatzkin & Cooper in those letters.

By letter of your law clerk dated April 10, 1973 to Shatzkin & Cooper, you recommend that such lawyers present to the Supreme Court of the State of New York any points which they wish to make with respect to the December 21, 1972 Order of that Court. If and when Shatzkin & Cooper present their fee application, we shall inform the Court and Shatzkin & Cooper of the various steps which this firm, with the assistance of the New York Attorney General, has taken to implement the December 21, 1972 Order of the New York Supreme Court, the provisions of which were initially worked out through extensive conferences between this firm and the Attorney General. Suffice it to say that Shatzkin & Cooper have displayed in their letters a profound ignorance of the pertinent facts relating to the

EXHIBIT I, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

Honorable Whitman Knapp

Supreme Court Order and the steps taken to effectuate the tender offer presently being made by Southeastern Properties, Inc. to its public stockholders. In any event, we shall demonstrate, at the appropriate time, that the efforts of Shatzkin & Cooper to insinuate themselves after the matter has been resolved with the Attorney General do not in any way give them any legal entitlement to secure counsel fees from Southeastern Properties, Inc.

Respectfully submitted,

Carl G. Bartholomaus

Carl Bartholomaus

CB:ET
CC: Judge Thomas Dickens
Thomas Dolan, Assistant Attorney General
All counsel in the instant case

EXHIBIT J, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED MAY 8, 1973.

SHATZKIN · AND · COOPER · ATTORNEYS
235 EAST 42ND STREET · NEW YORK, N. Y. 10017 · · MURRAY HILL 7-8800

May 8, 1973

Schwartz, Mermelstein, Burns,
Lesser & Jacoby, Esqs.
445 Park Avenue
New York, N. Y.

Att: Carl Bartholomaus, Esq.

Re: Wechsler v. Southeastern Properties

Gentlemen:

In connection with the class action motion that has been held by Judge Knapp pending the completion of the tender offer, would you please advise us of the following:

1. The number of addressees to whom the tender offer was mailed.

2. The number of persons or firms who tendered shares of Southeastern pursuant to the tender offer.

3. The number of shares tendered.

4. The number of advertisements placed as to the availability of the tender offer, the size of the advertisements and the publication in which said advertisements were placed.

Very truly yours,

Edward Labaton

EL:vc

OBJECTIONS TO PLAINTIFF'S INTERROGATORIES, DATED JUNE 28, 1973.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(16)

----------X

STUART D. WECHSLER, on behalf of himself and all other similarly situated,

Plaintiff,

-against-

SOUTHEASTERN PROPERTIES, INC., et al.,

Defendants.

----------X

72 Civ. 1813

JUDGE KNAPP

OBJECTIONS TO PLAINTIFF'S INTERROGATORIES

Defendant Southeastern Properties, Inc. objects to the following interrogatories heretofore served by plaintiff on the 29th day of May, 1973 on the grounds stated below:

(56)

1. Interrogatory numbers 1 through 6 on the grounds that plaintiff has released Southeastern Properties, Inc. and its officers and directors from any and all claims and does not have standing to prosecute this action.

2. Interrogatory numbers 1 through 6 on the ground that the matters inquired into are irrelevant to the issues raised in the pleadings herein and are not reasonably calculated to discover material leading to admissible evidence.

Dated: New York, New York
June 28, 1973

Yours, etc.,

SCHWARTZ, MERMELSTEIN, BURNS, LESSER & JACOBY

By: _____
A Member of the Firm

Attorneys for Defendant
Southeastern Properties, Inc.
Office & P.O. Address
445 Park Avenue
New York, New York 10022
(212) 980-3200

TO: SHATZKIN & COOPER
235 East 42nd Street
New York, New York 10017

OBJECTIONS TO PLAINTIFF'S INTERROGATORIES, DATED JUNE 28, 1973

HOWARD J. GOLDSTEIN, ESQ.
1250 Broadway
New York, New York 10001

KANE, KESSLER, PRICE, RAND
& PROUJANSKY, P.C.
60 Wall Street
New York, New York 10005

HART & HUME, ESQS.
10 East 40th Street
New York, New York 10017

NOTICE OF MOTION OF CROSS-MOTION OF SOUTHEASTERN PROPERTIES, INC.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

- - - - - -

SAME TITLE

- - - - - -

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Arnold I. Burns sworn to on July 12, 1973, the undersigned will cross move this Court, at Room 618, United States Courthouse, Foley Square, City of New York, on the 31st day of July, 1973 at 9:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rules 23, 54 and 56 of the Federal Rules of Civil Procedure, granting the following relief:

1. Denying plaintiff's motion for a class action determination on the grounds that Southeastern Properties, Inc. has conducted a tender offer provided for in an Order of the Supreme Court of the State of New York dated December 21, 1972, and that plaintiff herein no longer qualifies as a representative of the class because of his acceptance of that tender offer and his execution of a general release;

NOTICE OF MOTION OF CROSS-MOTION OF SOUTHEASTERN PROPERTIES, INC.

2. Dismissing this action without any award of fees for plaintiff's attorneys with respect to defendants Southeastern Properties, Inc., Anthony J. DeMatteo, William L. Manning, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III, and Chalmers K. Smith on the grounds that plaintiff has released each of the above defendants from any and all claims against them;

3. Awarding defendant Southeastern Properties, Inc. the costs of this action including reasonable attorneys fees on the grounds that plaintiff and plaintiff's attorneys have vexatiously and without good cause multiplied the proceedings herein and caused defendant Southeastern Properties, Inc. to incur increased costs; and

4. Granting such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that you are hereby required to serve any and all affidavits and memoranda to

NOTICE OF MOTION OF CROSS-MOTION OF SOUTHEASTERN PROPERTIES, INC.

be used in answering this cross motion on the undersigned no later than noon on July 25, 1973.

Dated: New York, New York
July 11, 1973

SCHWARTZ, MERMELSTEIN, BURNS,
LESSER & JACOBY
Attorneys for Defendants
Office & P. O. Address
445 Park Avenue
New York, New York 10022
(212) 980-3200

TO:

SHATZKIN and COOPER, ESQS.
235 East 42nd Street
New York, New York 10017

HART and HUME, ESQS.
10 East 40th Street
New York, New York

KANE, KESSLER, PREISS, RAND & PROUJANSKY, P.C.
60 Wall Street
New York, New York 10005

HOWARD J. GOLDSTEIN, ESQ.
1250 Broadway
New York, New York 10001

AFFIDAVIT OF ARNOLD I. BURNS, SWORN TO JULY, 1973, IN SUPPORT OF CROSS-MOTION.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

- - - - - -

SAME TITLE

- - - - - -

State of New York,

County of New York, ss:

ARNOLD I. BURNS, being duly sworn, deposes and says:

1. I am a member of the firm of Schwartz, Mermelstein, Burns, Lesser & Jacoby, attorneys for defendants Southeastern Properties, Inc. (hereinafter "Southeastern"), Anthony J. DeMatteo, William L. Manning, Ronald Ullenberg, David L. Boyd, H. T. Braddock, George E. McGee, III and Chalmers K. Smith (hereinafter the "defendants"), and submit this affidavit in opposition to plaintiff's motion pursuant to Federal Rule of Civil Procedure 37 and in support of defendants' cross motion for an order:

(a) denying plaintiff's motion pursuant to Federal Rule of Civil Procedure 23 for a determination that this action should proceed as the class action;

(b) dismissing this action pursuant to Federal Rule of Civil Procedure 56 without any aloowance for plaintiff's attorneys fees;

AFFIDAVIT OF ARNOLD I. BURNS, SWORN TO JULY, 1973, IN SUPPORT OF CROSS-MOTION

(c) awarding defendants the costs of this action, including reasonable attorneys fees; and

(d) granting such other and further relief as to this Court may seem just and proper.

Background.

2. The instant action was commenced on May 2, 1972, a month and one half after the Attorney General of the State of New York had taken action under Article 23-A of the General Business Law of the State of New York to suspend trading in the stock of Southeastern because of certain alleged irregularities relating to Southeastern's blue sky filings in the State of New York. Trading was suspended by the Attorney General on or about March 20, 1972, only a few days after Southeastern had first publicly offered its stock on Friday, March 17, 1972. Shortly after the suspension of trading, Southeastern, through its managing officers, Anthony J. DeMatteo and William L. Manning, voluntarily appeared at the offices of the Attorney General of the State of New York and answered in full all questions which the Attorney General asked concerning the public offering. My firm was retained to represent Southeastern and its officers and

directors at this time. Everett A. Frolich and Erwin Cherovsky, members of this firm, were present at this examination which was conducted by Assistant Attorney General Thomas N. Dolan. Because of the Attorney General's objections to the offering, Southeastern advised its shareholders by letter dated March 27, 1972, a true copy of which is annexed hereto as Exhibit "A", that it would not use the proceeds of the offering except to the extent necessary to keep intact its assets consisting principally of real property subject to various mortgage commitments and real estate taxes. To this end, Messrs. DeMatteo and Manning voluntarily reduced their salaries.

3. The complaint herein, the allegations of which are admittedly hearsay taken from information supplied to the plaintiff by William Hyman, his stockbroker, attempts to tread precisely the same path already broken by the Attorney General in seeking to protect the interests of the public shareholders of Southeastern. However, because of the Attorney General's investigation and Southeastern's decision to preserve intact as much of the fund from the public offering as possible, plaintiff's efforts to champion the interests of Southeastern's stockholders have been completely redundant and without

purpose. We have so advised plaintiff's counsel on numerous occasions from the commencement of the action to date. After service of the pleadings herein, plaintiff's action has for the most part been dormant inasmuch as no meaningful discovery proceedings were ever conducted. The limited motion practice engaged in by the attorneys for the parties herein will be discussed below.

4. During the spring, summer and fall of 1972, my firm and I as special counsel to Southeastern, and Assistant Attorneys General Thomas N. Dolan and Oerestes Mihaley were in frequent and constant communication in an attempt to resolve the Attorney General's objections to the public offering of Southeastern stock. By August 1972, negotiations with the Attorney General had reached a stage at which Southeastern informed its shareholders in a letter dated August 14, 1972, a true copy of which is annexed hereto as Exhibit "B", of its decision to effect an offer pursuant to which the public stockholders would be able to rescind their purchases of stock. When plaintiff's class action motion in this action was argued before this Court on October 13, 1972, Southeastern was party to a separate action pending in the Supreme Court of the State of New York which was brought by the Attorney

AFFIDAVIT OF ARNOLD I. BURNS, SWORN TO JULY, 1973, IN SUPPORT OF CROSS-MOTION

General. Southeastern at that time opposed plaintiff's application for the maintenance of this action as a class action on the grounds that the interests of the shareholders of Southeastern were already being adequately protected by the Attorney General in the state court proceeding and that multiple proceedings would lead to confusion and much unnecessary expense. This Court accordingly deferred decision of plaintiff's class action motion. On November 30, 1972, the staff of the Securities and Exchange Commission granted Southeastern's application and issued a "no action" letter permitting the tender offer to be made by Southeastern without there being a registration statement in effect. By December 22, 1972, the date of the second hearing held by the Court on plaintiff's class action motion, Southeastern and the Attorney General had agreed to the form of Injunction entered in the Supreme Court of the State of New York on December 21, 1972 by consent of all parties. In essence the Injunction directed Southeastern to offer to pay the public stockholders $5.00 per share, the amount they paid for the stock, and thus make them whole.

5. After the hearing held by this Court on December 22, 1972, a decision with respect to plaintiff's class

action motion was again deferred to allow Southeastern time to effect the tender offer pursuant to the Order of the Supreme Court of the State of New York.

The Tender Offer.

6. After Southeastern liquidated several of its properties during January, February and March of 1973, the Continental Stock Transfer Company, transfer agent for Southeastern, on March 30, 1973, mailed a copy of the tender offer to each individual, business, or broker which was an owner of record of Southeastern shares on December 21, 1972. This mailing was sent to 199 addressees. Since approximately 80% of the Southeastern stock held by the public was registered in street name, Southeastern affixed to each tender offer sent to a broker a printed rider informing such broker that additional copies of the tender offer would be made available for the beneficial owners. A copy of the tender offer package is annexed hereto as Exhibit "C". The affidavit of mailing from Continental Stock Transfer Company with respect to this tender offer is annexed hereto as Exhibit "D". To supplement the mailing and further insure notice to all stockholders, Southeastern placed

two notices in the financial pages of the Wall Street Journal and the New York Times on April 6, 1973. True copies of these notices are annexed hereto as Exhibit "E". In order to satisfy the anticipated demand for additional copies of the tender offer from the brokers holding its stock from beneficial owners, Southeastern produced and made available an additional 500 copies of the tender offer. These copies were distributed to brokers at a window maintained by Bankers Trust Company at One Battery Park, New York, New York and mailed to numerous individuals who requested copies of the tender offer package.

7. I am pleased to report to this Court that 193,500 shares out of the total of 200,000 shares of Southeastern held by the public were tendered pursuant to the March 30, 1973 offer. This represents a 96.75% response on the part of the shareholders to the offer. To the date of this affidavit, the Company has disbursed to the shareholders a total of $804,250 and anticipates disbursing an additional $163,250 when the administration of the tender offer is concluded.

8. This firm has expended many hours closely supervising the administration of the tender offer. In this

AFFIDAVIT OF ARNOLD I. BURNS, SWORN TO JULY, 1973, IN SUPPORT OF CROSS-MOTION

regard, we have assisted in every way those stockholders who for one reason or another had difficulty in complying with the terms of the tender offer. In many cases, Bankers Trust Company received Letters of Transmittal which were not signed, which were forwarded without the shares, or which were submitted without signature guarantees. These individuals were advised after the close of the tender offer how to perfect their tenders and, for the most part, have now been paid. A second problem which has required many hours of attention has been that of insolvent, apparently insolvent or liquidating brokers. Because a large percentage of Southeastern's shares were held in street name by small unknown brokers, we were concerned that direct payment to such brokers would result in a catastrophe should that broker become insolvent or otherwise become subject to third party claims. Members of my firm investigated each questionable situation and found several brokerage concerns which were in possible financial difficulty or in liquidation. With respect to tenders by these firms, we requested and received authority to pay the beneficial holders of Southeastern stock directly, thereby avoiding the risk of delay or other jeopardy which would result from direct

payment to such brokerage houses. Such procedure was employed for tenders from Multivest Securities, Inc., Monarch Funding Corp., Equidyne Securities, A. J. Carno, and Weis Securities, Inc. This difficult and time consuming part of the tender offer has been completed, except for the administration of the tender of Equidyne Securities of Salt Lake City, Utah and the tender of Monarch Funding Corp. of New York City. The records of Equidyne Securities have been seized by court order and additional steps need to be taken to positively identify the actual beneficial owners. Monarch Funding Corp. needs to supply but one confirmation and its last customer will be paid.

It is respectfully submitted that Southeastern's efforts to insure prompt payment to the proper party have been an exercise of responsible care and diligence. As just one example, it is apparent that thousands of customers of the New York Stock Exchange firm of Weis Securities, Inc. are now waiting for money and securities, formerly in possession of Weis Securities, Inc., which assets are now being administered by a Trustee. Dr. Richard Green, formerly a beneficial owner of 1000 shares of Southeastern stock who tendered his shares through

Weis Securities, Inc., has been paid directly for his stock because of the efforts of this firm to obtain the authority which was needed to pay him.

The Dismissal of This Action.

9. Among the many persons who tendered shares of Southeastern was the plaintiff in this action, Stuart D. Wechsler. Mr. Wechsler tendered a total of 290 of his 300 shares with his Letter of Transmittal, a true copy of which is annexed hereto as Exhibit "F". Mr. Wechsler was paid $5 for each of the 290 shares which he tendered in May, 1973. The Continental Stock Transfer Company will shortly forward Mr. Wechsler a stock certificate representing 10 shares of Southeastern stock. Mr. Wechsler is the only beneficial owner who tendered Southeastern shares who elected to tender less than his entire holdings thereof.

10. Plaintiff, by retaining only a miniscule interest in Southeastern, apparently hoped to retain his alleged status as representative of the class in this action. This attempt, however, is unsuccessful for several reasons. First, when the plaintiff forwarded his shares to Bankers Trust Company, the depository for the

tender offer, he signed the above Letter of Transmittal which contained a general release running to the Company, its officers and directors. Southeastern respectfully refers this Court to Exhibit "F" hereto which sets forth the release duly signed by plaintiff. Accordingly, Mr. Wechsler no longer has a claim against Southeastern Properties, Inc. and may no longer represent the class. Inasmuch as no action can proceed without an alleged aggrieved party, this action must be dismissed forthwith, and plaintiff's application for class action status denied.

11. Furthermore, as was first argued in Southeastern's answering papers to the class action motion, a tender offer, such as the one which has been conducted by Southeastern, is a complete defense to the claim of any shareholder for damages. Under the common law of fraud or the provisions of 15 U.S.C.A. ¶¶77(k-1), Southeastern's maximum liability to any shareholder purchasing stock in the public offering would be the purchase price of the securities. Repayment of the purchase price has been or soon will be effected with respect to individuals owning 96.75% of Southeastern's public stock.

Those shareholders who have declined the offer have elected to remain shareholders of Southeastern, and any claims of theirs are, as a result, now barred. Accordingly, for this reason, the action must be dismissed.

Costs and Attorneys' Fees.

12. The sole issue remaining in this action, which issue was preserved by this Court in the hearing held on December 22, 1972 to be considered after the tender offer was completed, is the question relating to costs and attorneys' fees. At that time, only plaintiff had expressed any intention of applying for an allowance for attorneys' fees. However, the subsequent conduct of plaintiff's attorneys in attempting to attack Southeastern's conduct of the tender offer and in other respects malign the good faith and competency of the officers of Southeastern and the members of this firm has convinced me that Southeastern is entitled to have the costs of this action, together with a part of its attorneys' fees, taxed against plaintiff and his attorneys.

13. In assessing plaintiff's contribution to the final settlement of the problem which was accomplished by the tender offer, I have reached a number of conclusions

with respect to the maintenance of this action. From March 20, 1972 at which time trading in Southeastern stock was suspended by the Attorney General of the State of New York, the public shareholders of Southeastern were at all times adequately protected both by the Attorney General's investigation and the agreement worked out between the Attorney General and Southeastern to freeze the proceeds of the public offering. As discussed below, plaintiff commenced and maintained this action with full knowledge of the fact that the Attorney General was proceeding to effect the return of the purchase price of any shares to Southeastern's public shareholders.

14. After service of the pleadings herein, there were three short periods of motion practice prior to the resolution of all problems concerning Southeastern's public offering by the entry of the Consent Injunction on December 21, 1972 which provided for the tender offer. The first motion was the somewhat premature application for summary judgment brought by the attorney for Schneider and Baratta, Howard J. Goldstein. This motion was denied. The second motion was brought by Southeastern to protect its officers and directors from an oppressive series of

depositions which plaintiff's attorneys had scheduled for New York. This motion, in which Southeastern prevailed in changing the locale for discovery, could have been avoided if plaintiff's attorneys had been more reasonable in discussing the course for discovery. The last motion, plaintiff's application for a class action determination, had become, before its return date, moot because of the action commenced by the Attorney General which froze Southeastern's assets and led to the tender offer. There has been no meaningful discovery in this action, not one word of dialogue relating to a proposed resolution of the claim, and nothing to suggest that plaintiff's attorneys contributed to Southeastern's settlement with the Attorney General. From my intimate knowledge of all the proceedings herein and the negotiations between my office and the office of the Attorney General, I can say with certainty that plaintiff's attorneys in no way contributed to or caused the tender offer, which has made each of Southeastern's public shareholders whole.

On July 5, 1973, Erwin Cherovsky, a member of this firm, spoke with Assistant Attorney General Thomas N. Dolan concerning plaintiff's maintenance of this action. I am informed by Mr. Cherovsky that Mr. Dolan remembered

speaking with plaintiff's attorneys several times both before and after the commencement of this action. Mr. Dolan recalled advising plaintiff's attorneys that the office of the Attorney General was proceeding to secure the return of the fund obtained through the public offering and stated that his office could do nothing directly to prevent the maintenance of a civil action. Mr. Dolan also confirmed the fact that plaintiff's maintenance of the civil action had no effect upon the commencement of the investigation and proceeding by the Attorney General and the resolution of that proceeding through the tender offer.

15. Although the general rule is that each party must be responsible for the fees of his own attorney, in class actions or derivative actions where a plaintiff has through his attorneys procured a settlement of an action favorable to the members of the class, or to a corporation, attorneys fees will sometimes in the discretion of the court, be awarded to plaintiff. Nothing which has transpired in this case, however, brings plaintiff or his attorneys within the limits of this exception. As is clear from this affidavit, this action was never declared to be a class action and is in no way capable

of being construed to be a derivative action. No class has ever been defined; no settlement herein, favorable or otherwise, has been reached; no fund has been created; no benefit has accrued to Southeastern; and, in summary, nothing much of anything has happened, except as shall be discussed below, Southeastern and its counsel for no good reason, have been vexed, harassed and hounded by counsel to plaintiff following the tender offer settlement between Southeastern and the Attorney General.

16. The reason for the demise of this proceeding is that plaintiff commenced and has pressed a redundant proceeding which has merely wasted the precious time of this Court and consumed the efforts of five law firms in a matter which was being closely watched and attended to by the Attorney General of the State of New York.

For this Court to give consideration to an application for attorneys' fees, on the ground that (if I may anticipate plaintiff's fee application) this action forced Southeastern to settle with the Attorney General, would license and encourage attorneys with clients such as the plaintiff herein to closely follow the investigations of State and Federal agencies with the thought of commencing redundant class actions and hope of obtaining a fat fee

by riding on the coattails of such agencies. This would of course result in the kind of wasted effort which has unfortunately been the case here.

17. Plaintiff and his attorneys did not, however, refrain from further involvement in this matter. Even after Southeastern had commenced the tender offer, Shatzkin & Cooper, in a thinly veiled effort to second guess my firm with respect to the proper administration of the tender offer, made a number of serious charges against Southeastern and the members of this firm. It is not difficult to see that plaintiff's attorneys embarked on this effort in order to support their fee application with allegations that they were instrumental in advising Southeastern how to conduct a tender offer. The fees which Southeastern incurred when my firm responded to these baseless and reckless charges should be awarded to Southeastern and charged against plaintiff when this action is dismissed.

18. First, plaintiff's attorneys on April 6, 1973, the *same* day Southeastern's announcements of the tender offer appeared in the Wall Street Journal and The New York Times, addressed a letter to this Court demanding that newspaper announcements of the tender offer appear.

AFFIDAVIT OF ARNOLD I. BURNS, SWORN TO JULY, 1973, IN SUPPORT OF CROSS-MOTION

After this Court, in its letter of April 10, 1973, advised plaintiff's attorneys to address their comments to the Supreme Court of the State of New York, plaintiff's attorneys wrote a second letter in which they then claimed that the newspaper announcements which appeared were not large enough. In this letter, they criticized my firm's efforts in giving notice of the offer and implied that Southeastern was not in good faith complying with the terms of the Consent Injunction. A copy of that letter is annexed hereto as Exhibit "G". Yet a third letter was sent on April 16, 1973, a copy of which is annexed hereto as Exhibit "H", which complained of the fact that the plaintiff's own broker, in whose name his stock was held, had not forwarded him a copy of the tender offer. Plaintiff, who is himself an attorney and supposedly familiar with the practices of the stock exchanges, must be aware of the fact that any public company only communicates with its shareholders of record because it has no way of knowing whom the beneficial owners of its stock are. Accordingly, it is a broker's responsibility to transmit information and the terms of an offer such as the tender offer herein to his customers. Even so, as

noted above, Southeastern has followed procedures which go beyond normal business practice in insuring adequate notice to all beneficial owners. The decision of plaintiff's attorneys to charge Southeastern with the negligence of plaintiff's own broker exhibits best their frantic efforts in attacking my firm and Southeastern.

19. In the face of the serious content of these charges, I respectfully submit that the zeal, care and diligence exercised by this firm and Southeastern in conducting the tender offer is established beyond question by the 96.75% rate of acceptance of the tender offer. Nevertheless, at the time it was necessary for Southeastern to respond to these charges so that silence would not be taken as acquiescence with the charges. Thus, this firm responded thereto by letter dated April 23, 1973. A copy of that letter submitted to this Court is annexed hereto as Exhibit "I".

20. It is well established that if a suit is maintained in bad faith, vexatiously, or for oppressive reasons, attorney's fees may be assessed against the party proceeding improperly. It is submitted that the series of reckless charges made by plaintiff's attorneys during April of this year were asserted solely for the purpose

of supporting a fee application at the termination of this action and were in all respects made without justification and without knowledge of the pertinent facts. Accordingly, Southeastern is entitled to assessment of the legal fees incurred by your deponent's firm when considering, discussing and responding to these charges. Based on the time records kept by my firm, Southeastern incurred $1,500 of legal fees as a result of the conduct by plaintiff's attorneys. Title 28 U.S.C.A. §1927 further provides that costs of this nature may be likewise awarded against attorneys who have unreasonably multiplied proceedings in an action. Thus, not only plaintiff but also Shatzkin & Cooper, his attorneys, should be taxed for this element of Southeastern's attorneys fees herein.

21. Plaintiff's attorneys on May 29, 1973, served a second set of interrogatories on this firm inquiring of the results of the tender offer. On June 28, 1973, this firm duly served its objections to these interrogatories on plaintiff's attorneys stating in its objections that since plaintiff had released Southeastern and its officers and directors, no further discovery would be

appropriate. In addition the questions posed by plaintiff's attorneys were in no way related to the pleadings herein.

22. Plaintiff's motion to compel answers to these questions should be denied for several reasons. The information requested therein is, to the extent that it is currently available, contained in this affidavit. This information amply demonstrates the success of the tender offer and the fact that Southeastern has made its public shareholders whole. Because of this, any further discovery proceedings herein are wasteful and totally without purpose.

WHEREFORE, I respectfully request that an order be entered denying plaintiff's motion in all respects and awarding defendants the relief requested in their notice of cross-motion.

(Sworn to by Arnold I. Burns, July, 1973.)

EXHIBIT A, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
LETTER DATED MARCH 27, 1972.

Southeastern Properties, Inc.

March 27, 1972

To Shareholders of Southeastern Properties, Inc.

Gentlemen:

After our recent offering had been completed and closed, we were verbally advised by the Attorney General of the State of New York that a problem apparently existed with our filing under the "Blue Sky Laws" of that State. At the verbal direction of the Attorney General of the State of New York, trading, in our stock, in New York has been temporarily halted.

In order to protect your interests we have deposited the balance of the proceeds of the offering remaining in our possession (approximately $600,000) in a "Special Account for the Benefit of Shareholders of Southeastern Properties, Inc." and these monies will remain untouched until some resolution of the problems has been had. Additionally, the commissions paid to brokers in connection with the offering will be requested to be returned and deposited in that account so that approximately $700,000 would be on hand. Our assets are more than sufficient to make available the additional $300,000.

We intend to continue our efforts to clarify and ratify the problems and to protect you, our shareholders. We will, of course, keep you fully advised of all developments.

Very truly yours,

A. J. DeMatteo

Anthony J. DeMatteo
President

AJD:

EXHIBIT B, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
LETTER OF SOUTHEASTERN PROPERTIES, INC. DATED
AUGUST 14, 1972.

(Reproduced, *supra*, at pages 127a to 128a as Exhibit A, Annexed to Affidavit of Arnold I. Burns, Sworn to October 10, 1972.)

EXHIBIT C, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
TENDER OFFER PAPERS.

(Reproduced, *supra*, at pages 213a to 231a as Exhibit E, Attached to Affidavit of Edward Labaton, Sworn to June 27, 1973.)

EXHIBIT D, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
AFFIDAVIT OF MAILING.

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

Joseph Raitano being duly sworn, deposes and says:

I am Vice President of Continental Stock Transfer Company, 19 Rector Street, New York, New York, 10006, the Transfer Agent for Southeastern Properties, Inc. and I have supervision over the records and operations of such Transfer Agent.

On the 30 day of March 1973, I caused to be mailed at the Post Office regularly maintained by the United States Government at the Church Street Station in the borough of Manhattan, City and State of New York, to each owner of record except those holders appearing on the attached list, appearing as such on the books kept by Continental Stock Transfer Company in its office as such Transfer Agent of Common Stock as of the close of business on the 21 day of December 1972, the following described paper(s) (of which a specimen(s) (is) (are) attached hereto) a copy of (each of) which was enclosed in an envelope, postage prepaid, addressed to each such owner at the proper address appearing from such books or records:

"A" TENDER OFFER PACKAGE

Joseph Raitano

Sworn to before me this
10 day of April 1973.

Donald F. Gress

DONALD F. GRESS
Notary Public, State of New York
No. 30-1567850
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1975

EXHIBIT D, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

STOP LIST

TO: BANKERS TRUST:

The tender offer to the stockholders of Southeastern Properties, Inc., for which you have accepted the Company's appointment as depositary, will be made to each of the stockholders on the list previously supplied to you, except for the following:

	Stockholder	No. of Shares
1.	International Land Locators, Inc.	218,044
2.	Anthony J. DeMatteo	2,423
3.	William L. Manning	2,423
4.	Ronald Ullenberg	2,422
5.	David L. Boyd	2,422
6.	H. T. Braddock	2,422
7.	George E. McGee	2,422
8.	Chalmers K. Smith	2,422
	TOTAL	235,000

SCHWARTZ, MERMELSTEIN, BURNS, LESSER & JACOBY
Attorneys for Southeastern Propertis, Inc.

EXHIBIT E, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
NEWSPAPER ARTICLES.

New York Times - Friday, April 6, 1973

SOUTHEASTERN PROPERTIES, INC.

TENDER OFFER

Southeastern Properties, Inc. hereby advises that it has commenced a tender offer to pay its stockholders of record as of the close of business on December 21, 1972 $5.00 per share for each share duly tendered. The offer expires April 30, 1973.

Copies of the tender offer papers can be obtained by writing Bankers Trust Company, P.O. Box 4767, Grand Central Station, New York, N.Y. 10017, or telephoning 212-692-4522.

Wall Street Journal - Friday, April 6, 1973

SOUTHEASTERN PROPERTIES, INC.

Tender Offer

Southeastern Properties, Inc. hereby advises that it has commenced a tender offer to pay its stockholders of record as of the close of business on December 21, 1972 $5.00 per share for each share duly tendered. The offer expires April 30, 1973.

Copies of the tender offer papers can be obtained by writing Bankers Trust Company, P.O. Box 4767, Grand Central Station, New York, N.Y. 10017, or telephoning 212-692-4522.

EXHIBIT F, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
LETTER OF TRANSMITTAL.

Offer Expires at 5:00 p.m., Eastern Standard Time,
on April 30, 1973

LETTER OF TRANSMITTAL

Tender of Common Shares, $.01 Par Value, of
Southeastern Properties, Inc. in Acceptance
of Offer to Purchase dated March 30, 1973.

Important: This form should be completed and sent to the Depositary named below, together with your certificates for the Common Shares, $.01 Par Value, of Southeastern Properties, Inc.

Your Broker or Bank will Assist you in Completing this Form.

To Depositary:

Bankers Trust Company
P. O. Box 4767
Grand Central Station
New York, New York 10017

Dear Sirs:

The undersigned shareholder hereby acknowledges receipt of, and accepts (with respect to the shares deposited herewith or tendered hereby), the Offer dated March 30, 1973 (the "Offer") of Southeastern Properties, Inc. (the "Company"), to purchase Common Shares, $.01 Par Value, of the Company (the "Shares") upon the terms and conditions set forth therein and in this Letter of Transmittal, including the accompanying instructions, and in accordance therewith the undersigned hereby delivers or agrees to deliver to the above-named Depositary for such transfer and sale to the Company Shares as indicated below:

Certificate Number(s)	Total Number of Shares Enclosed	Total Number of Shares Tendered if Less Than All*
JC 1238	100	
JC 1239	100	
JC 1240	100	90

*All Shares represented by certificates listed are deemed to have been tendered unless otherwise indicated in this space.

Total Tendered 290 shares

The undersigned shareholder understands that a tender is not made in acceptable form until timely receipt by the Depositary of this Letter of Transmittal, together with all accompanying evidences of authority required by the accompanying instructions, in form satisfactory to the Company. All questions as to tenders, including the date of receipt of a tender, the propriety of execution thereof and other questions as to the eligibility or acceptability of any tender, will be determined by the Company, and its determination shall be final and binding.

The undersigned shareholder hereby warrants that the undersigned has full and complete authority to sell, assign and transfer the above-mentioned Shares, that said Shares are not subject to any adverse claims, and that the Company will acquire good and marketable title thereto, free and clear of all liens, pledges, charges and encumbrances, when the same are purchased by it. The

undersigned will, upon request, execute any additional documents necessary or desirable to complete the sale, assignment and transfer of the above-described Shares.

All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned shareholder, and all obligations of the undersigned hereunder shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

If the certificates representing the Shares tendered hereby are not delivered herewith, a member firm of a national securities exchange or of the National Association of Securities Dealers, Inc. or a commercial bank or trust company in the United States must guarantee in the space hereinafter provided or in an appropriate letter or telegram that such certificates will be deposited with the Depositary no later than eight business days after the expiration date of the Offer, and must in this Letter when delivered confirm that the tender of such Shares is in compliance with Rule 10b-4 under the Securities Exchange Act of 1934. See Instruction 4 accompanying this Letter.

ASSIGNMENT AND RELEASE

In consideration of the Offer and the payment of the purchase price specified therein, the undersigned hereby (a) sells, assigns and transfers unto the Company or its order the Shares of the Company represented by the previously-described certificates which the Company is to purchase under the terms of the Offer, and hereby irrevocably constitutes Continental Stock Transfer Company as attorney to effectuate the transfer of said Shares on the books of the Company with full power of substitution in the premises and (b) release and discharge the Company and its assigns (whether by merger, sale of assets or stock, or otherwise) and its officers and directors from all manner of actions, causes of action, suits, claims and demands which the undersigned may have for any reason whatsoever against all or any of them.

The undersigned understands and agrees that the Depositary shall not be liable hereunder for any act or omission of the Company.

Very truly yours,

Dated: April 13, 1973.

Stuart D. Neidhardt

Signature(s) guaranteed

(see instructions 2 and 3)

Signature(s) of registered holder(s). (Must be signed by registered holder(s) exactly as name(s) appears in certificate(s) or by person(s) authorized to become registered holder(s) by certificates and documents transmitted or to be transmitted in the case of guaranteed certificates).

Print Name STUART D. NEIDHARDT

and Address 122 E. 42nd St.

New York, N.Y. 10017
(Zip Code)

Telephone No. 212 867-3570
(Area Code)

Social Security No. 063-30-4361

THE INSTRUCTIONS ACCOMPANYING THIS LETTER OF TRANSMITTAL MUST BE FOLLOWED

EXHIBIT F, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

TO BE USED ONLY IF CERTIFICATES ARE NOT TRANSMITTED HEREWITH. CERTIFICATE NUMBERS MUST BE INDICATED IN APPROPRIATE BOX ON PAGE ONE OF THIS LETTER OF TRANSMITTAL.

The undersigned,

☐ a member firm of a national securities exchange or of the National Association of Securities Dealers, Inc.

☐ a commercial bank in the United States,

☐ a trust company in the United States,

guarantees to deliver to the Depositary (in proper form for transfer) certificates for the Shares tendered by this Letter of Transmittal not later than eight business days after the expiration date of the Offer; and confirms that the tender of such shares is in compliance with Rule 10b-4 under the Securities Exchange Act of 1934.

Sign Here .....
Authorized Signature

Unless otherwise indicated under Special Delivery Instructions, the check for the purchase price will be payable to the order of the person(s) executing the Assignment on page two of this Letter of Transmittal and mailed to the address shown on page two. Similarly, unless indicated under Special Delivery Instructions, if the Shares tendered, or any portion thereof, are not purchased by the Company, the certificates representing such Shares (and accompanying documents, as appropriate) will be returned to the person(s) executing the Assignment on page two of this Letter of Transmittal at the address shown on page two.

SPECIAL DELIVERY INSTRUCTIONS

To be completed only if certificates are to be returned, or check is to be mailed, to other than the person(s) executing the Assignment on page two of this Letter of Transmittal.

To: .....
Print Name

.....
Street Address

.....
City and State Zip Code

DO NOT WRITE IN THIS SPACE

Shares Received:	Date Mailed:	Processed By:
Shares Accepted:	Check No.	Amount $
Shares Returned:	Certificate No.	Mail No.

EXHIBIT G, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
LETTER DATED APRIL 11, 1973.

HATZKIN · AND · COOPER · ATTORNEYS
5 EAST 42ND STREET · · NEW YORK, N. Y. 10017 · · MURRAY HILL 7-8800

April 11, 1973

Honorable Thomas Dickens
Supreme Court of the
State of New York
60 Centre Street
New York, N. Y.

Re: People v. Southeastern
Properties, Inc.
41772/72

Dear Justice Dickens:

We are the attorneys for Stuart Wechsler and on his behalf we have commenced a class action in the United States District Court for the Southern District of New York against Southeastern Properties, Inc. and others connected with the public offering of Southeastern securities made in March 1972. Our motion for a class action determination has been held in abeyance pending the completion of the rescission offer directed by your Honor on December 21, 1972. We received a copy of the rescission offer on April 3 and on April 6 we sent some comments to Judge Knapp, who in turn informed us that we should address our questions to your Honor.

We believe that the notice to purchasers of Southeastern stock is inadequate. In view of the fact that much of the Southeastern stock is presumbably held in street name, we believe that a good faith effort should be made to identify all beneficial owners of shares so that they can be assured of notice of the tender offer. This can be done by a court order directed to brokers, banks and other nominees directing that they supply names and addresses of beneficial owners for whom they hold Southeastern stock. This has been done in other cases, including cases in which we participated (see Feder v. Harrington, CCH Fed. Sec. L. Rep. ¶93,687).

We have noticed one small advertisement not more than two columnar inches in the New York Times. We would propose that the advertisements be at least two columns wide by at least 5 inches high so that it would be brought to the attention of a large number of Southeastern security holders.

EXHIBIT G, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS

In this connection, in another class action in which we participated the advertisements were required to be at least two columns wide by 7 inches.

Since many shares are presumably held in street name or other nominee accounts, the period in which to accept the tender offer should be extended for at least another 30 days.

In connection with the comments made herein, we transmit a copy of our letter dated February 8, 1973 to Southeastern's attorneys, in which we asked whether any steps would be taken to notify shareholders whose securities are held in street name or whose addresses may have changed of the terms of the rescission offer. The only "effort" made to reach beneficial owners is the request in the tender offer that record holders deliver the letter of transmittal and the tender offer to beneficial owners and minimal advertising of the tender offer. Any person with experience in matters of this kind knows that this is patently inadequate notice to beneficial owners.

Respectfully,

Edward Labaton

EL:vc
Encl.

cc: Hon. Whitman Knapp
Thomas N. Dolan, Esq.
All Counsel in Southeastern
v. Wechsler

**EXHIBIT H, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
LETTER DATED APRIL 16, 1973.**

SHATZKIN · AND · COOPER · ATTORNEYS
235 EAST 42ND STREET · · NEW YORK, N. Y. 10017 · · MURRAY HILL 7-8800

April 16, 1973

Honorable Thomas Dickens
Supreme Court of the
State of New York
60 Centre Street
New York, N. Y.

Re: People v. Southeastern
Properties, Inc.
41772/72

Dear Justice Dickens:

In connection with my letter of April 11, 1973, in which I objected to the notice of procedures for shareholders of Southeastern who hold their stock in street name, I am advised by my client, Stuart Wechsler, that he did not receive any notice of the Tender Offer until I myself had sent him a copy. His stock is held in street name.

Respectfully yours,

EL:vc

Edward Labaton

cc: All Counsel in Southeastern v. Wechsler
Thomas N. Dolan, Esq.

EXHIBIT I, ANNEXED TO AFFIDAVIT OF ARNOLD I. BURNS--
LETTER TO JUDGE KNAPP DATED APRIL 23, 1973.

(Reproduced, *supra*, at pages 237a to 239a as Exhibit I, Attached to Affidavit of Edward Labaton, Sworn to June 27, 1973.)

NOTICE OF CROSS-MOTIONS OF DEFENDANT MONARCH FUNDING CORP. DATED JULY 30, 1972.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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SIRS:

PLEASE TAKE NOTICE, that upon the annexed Affidavit of EDMUND PREISS, ESQ., sworn to on the 30th day of July, 1973, the undersigned will cross move this Court, at Room 618, United States Courthouse, Foley Square, City of New York, on the 31st day of July, 1973 at 9:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rules 23, 54 and 56 of the Federal Rules of Civil Procedure, granting the following relief:

1. Granting summary judgment in favor of defendant, MONARCH FUNDING CORP., and dismissing the action as to said defendant without any award of fees for plaintiff's attorneys with respect to said defendant on the grounds that plaintiff does not have standing to continue this action and that the class he allegedly represents no longer exists and that plaintiff has released said defendant from any and all claims against it;

NOTICE OF CROSS-MOTIONS OF DEFENDANT MONARCH FUNDING CORP. DATED JULY 30, 1972

2. Denying plaintiff's motion for a class action determination on the grounds that defendant, SOUTHEASTERN PROPERTIES, INC., has conducted a tender offer provided for in an Order of the Supreme Court of the State of New York dated December 21, 1972, and that plaintiff herein no longer qualifies as a representative of the class because of his acceptance of that tender offer and his execution of a general release; and

3. Granting such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
July 30, 1973

TO:

SHATZKIN and COOPER, ESQS.
Attorneys for Plaintiff
235 East 42nd St.
N. Y., N. Y. 10017

SCHWARTZ, MERMELSTEIN, BURNS, LESSER & JACOBY, ESQS.
Attorneys for Defendants
SOUTHEASTERN PROPERTIES, *et al.*
445 Park Avenue, N. Y., N. Y.10022

HART and HUME, ESQS.
Attorneys for Defendants
JAMES HENRY & HENRY, McCORD, FORRESTER & RICHARDSON
10 East 40th St., N. Y., N. Y. 10016

HOWARD J. GOLDSTEIN, ESQ.
Attorney for Defendants
IRWIN N. SCHNEIDER and JOSEPH P. BARATTA
1250 Broadway, N. Y., N. Y. 10001

KANE, KESSLER, PREISS, RAND & PROUJANSKY, P.C.
Attorneys for Defendant
MONARCH FUNDING CORP.
Office & P. O. Address
60 Wall Street
New York, New York 10005
Tel. No.: (212) 425-1222
By: s/ EDMUND PREISS
An Officer of the Firm

AFFIDAVIT OF EDMUND PREISS, SWORN TO JULY 30, 1972, IN SUPPORT OF CROSS-MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

EDMUND PREISS, being duly sworn, deposes and says:

1. I am an officer of the firm of Kane, Kessler, Preiss, Rand & Proujansky, P.C., attorneys for defendant, MONARCH FUNDING CORP., in the above entitled action and I am fully familiar with all the facts and circumstances herein. I make this affidavit in support of the instant cross-motion for summary judgment dismissing the complaint as against said defendant and in opposition to plaintiff's motion to have this action determined a class action.

2. I respectfully invite the Court's attention to the affidavit of Arnold I. Burns, Esq., sworn to on the 12th day of July, 1973 submitted in support of a similar motion on behalf of defendant, SOUTHEASTERN PROPERTIES, INC., and supporting memoranda of law which clearly set

forth in detail why plaintiff's motion should be denied and the cross-motions granted.

3. I am advised that defendant, SOUTHEASTERN PROPERTIES, INC., has effected a tender offer rescinding the issue which is the subject matter of this law suit. In connection with the rescission offer, the owners of 193,500 shares of SOUTHEASTERN PROPERTIES, INC. stock, including plaintiff, executed releases in exchange for said Company's redemption of those shares. Plaintiff, STUART D. WECHSLER, has accepted a full refund of his purchase price for 290 shares of the 300 shares of common stock of SOUTHEASTERN PROPERTIES, INC. which he purchased during the original public offering of said stock. He has retained 10 shares voluntarily.

4. It is respectfully submitted that plaintiff retained the 10 shares to enable him to continue this law suit. Plaintiff should not be permitted to take advantage of the rescission offer on the one hand and, on the other, voluntarily retain said shares and claim he, individually and on behalf of a purported class of persons, most of whom have also taken advantage of the rescission offer, has been damaged. Furthermore, I have been advised that plaintiff, in connection with the rescission offer,

AFFIDAVIT OF EDMUND PREISS, SWORN TO JULY 30, 1972, IN SUPPORT OF CROSS-MOTION

executed a general release dated April 13, 1973 wherein he released from any and all liability defendant, SOUTHEASTERN PROPERTIES, INC., its officers and directors. Obviously, plaintiff having unconditionally released the issuer and other parties from any further liability has also unconditionally released defendant, MONARCH FUNDING CORP., from any further liability. As a result of plaintiff's tendering his shares and executing a general release, he is not entitled to any further damages and cannot represent any class which may exist.

WHEREFORE, it is respectfully requested that defendant, MONARCH FUNDING CORP.'s cross-motion be granted in its entirety and plaintiff's motion in all respects be denied.

(Sworn to by Edmund Preiss, July 30, 1973.)

NOTICE OF MOTION OF DEFENDANTS SCHNEIDER AND BARATTA DATED JULY 29, 1973.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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SIRS:

PLEASE TAKE NOTICE, that upon the annexed Affidavit of HOWARD J. GOLDSTEIN, sworn to the 28th day of July, 1973, the undersigned will move this court, at Room 618, of the United States Courthouse, Foley Square, New York, New York, on the 31st day of July, 1973 at 9 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rules 23, 54 and 56 of the Federal Rules of Civil Procedure, granting a summary judgment in favor of Defendants IRWIN N. SCHNEIDER and JOSEPH P. BARATTA dismissing the action as to said Defendants on the grounds that Plaintiff does not have standing to continue this action and that the class he

allegedly represents no longer exists, if indeed it ever did, and for such other and further relief as to the court may seem just and proper.

Dated: New York, New York
July 29, 1973

HOWARD J. GOLDSTEIN
Attorney for Defendants
IRWIN N. SCHNEIDER and
JOSEPH P. BARATTA
1250 Broadway
New York, N. Y. 10001
Tel: 212 736-8088

TO:

HART & HUME
Attorneys for Defs.
JAMES HENRY and HENRY, McCORD,
FORRESTER & RICHARDSON
10 East 40 Street
New York, N. Y. 10016

SHATZKIN AND COOPER, ESQS.
Attorneys for Plaintiff
235 East 42 Street
New York, N. Y. 10017

KANE, KESSLER, PREISS, RAND & PROUJANSKY, P.C.
Attorneys for Defendant MONARCH FUNDING
60 Wall Street
New York, N. Y. 10005

SCHWARTZ, MERMELSTEIN, BURNS, LESSER & JACOBY, ESQS.
Attorneys for Defendants SOUTHEASTERN PROPERTIES,
INC., *et al.*
445 Park Avenue
New York, N. Y. 10022

AFFIDAVIT OF HOWARD J. GOLDSTEIN, SWORN TO JULY 29, 1973, IN SUPPORT OF CROSS-MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE
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State of New York,

County of New York, ss:

I, HOWARD J. GOLDSTEIN, being duly sworn, depose and say:

I am the attorney of record for Defendants IRWIN N. SCHNEIDER and JOSEPH P. BARATTA in the above entitled matter and am fully familiar with all the facts and circumstances herein. I respectfully submit this Affidavit in support of the within motion for summary judgment dismissing the complaint as against my clients on the grounds set forth in the Notice of Motion.

My clients, doing business as SCHNEIDER & BARATTA, were special counsel to SOUTHEASTERN PROPERTIES, INC. during the time when it was in registration.

In order not to burden this court with unnecessary papers, I respectfully refer the court to the Affidavit of ARNOLD I. BURNS, sworn to July 12, 1973, which was

AFFIDAVIT OF HOWARD J. GOLDSTEIN, SWORN TO JULY 29, 1973, IN SUPPORT OF CROSS-MOTION

submitted in support of a similar motion made by Defendant SOUTHEASTERN PROPERTIES, INC. and other memorandums of law submitted on behalf of SOUTHEASTERN and Defendants JAMES HENRY, HENRY, McCORD, FORRESTER and RICHARDSON.

MR. WECHSLER, in my opinion, has clearly released the Issuer and other parties from any further liability by reason of his execution of a release annexed to the tender papers submitted with 290 of his shares of SOUTHEASTERN PROPERTIES, INC. The fact that MR. WECHSLER chose to retain 10 shares is of no consequence since the release which he signed was explicit and not conditional.

As a result of his signing this release, he can no longer claim to represent any class of shareholders herein. It should be pointed out that owners of 193,500 shares, including MR. WECHSLER's shares, executed releases in exchange for the Company's redemption of those shares. At the present time, therefore, there are 6,500 shares outstanding and still in the hands of the public class who MR. WECHSLER supposedly represented. Clearly, there may no longer even be a class to represent since the number in the class have been greatly reduced and the owners of most as in all of the outstanding shares have

deliberately chosen to remain stockholders of SOUTHEASTERN PROPERTIES, INC. instead of accepting the Company's offer of rescission.

WHEREFORE, it is respectfully requested that the within motion be in all respects granted.

(Sworn to by Howard J. Goldstein, July 29, 1973.)

NOTICE OF MOTION OF DEFENDANTS JAMES HENRY AND HENRY, McCORD, FORRESTER & RICHARDSON, DATED JULY 25, 1973.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Lester Esterman, sworn to on July 25th, 1973, the undersigned will move this court, at Room 618, United States Courthouse, Foley Square, City of New York, on the 31st day of July, 1973 at 9:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rules 23, 54 and 56 of the Federal Rules of Civil Procedure, granting summary judgment dismissing the action as to said defendants James Henry and Henry, McCord, Forrester & Richardson because plaintiff Stuart Wechsler has rendered moot and extinguished any claim he may have had, and has no

NOTICE OF MOTION OF DEFENDANTS JAMES HENRY AND HENRY, McCORD, FORRESTER & RICHARDSON, DATED JULY 25, 1973

proveable damages, and for such other and further relief as to the court may seem just and proper.

HART & HUME
By s/ LESTER ESTERMAN
A Member of the Firm
Attorneys for Defendants
JAMES HENRY and HENRY, McCORD,
FORRESTER & RICHARDSON
Office & P. O. Address
10 East 40 Street
New York, New York 10016
Tel: (212) 686-0920

TO:

SHATZKIN AND COOPER, ESQS.
Attorneys for Plaintiff
235 East 42 Street
New York, New York 10017

KANE, KESSLER, PREISS, RAND & PROUJANSKY, P.C.
Attorneys for Defendant
MONARCH FUNDING
60 Wall Street
New York, New York 10005

HOWARD J. GOLDSTEIN, ESQ.
Attorney for Defendants
SCHNEIDER & BARATTA
1250 Broadway
New York, New York 10001

SCHWARTZ, MERMELSTEIN, BURNS, LESSER & JACOBY, ESQS.
Attorneys for Defendants
SOUTHEASTERN PROPERTIES, INC., *et al.*
445 Park Avenue
New York, New York 10022

AFFIDAVIT OF LESTER ESTERMAN, SWORN TO JULY 25, 1973, IN SUPPORT OF CROSS-MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

LESTER ESTERMAN, being duly sworn, deposes and says:

I am a member of the firm of HART & HUME, attorneys for defendant JAMES HENRY and HENRY, McCORD, FORRESTER & RICHARDSON and I submit this affidavit in support of the within defendants' motion for summary judgment dismissing the action as to said defendants because plaintiff STUART WECHSLER has rendered moot and extinguished any claim he may have had and can have no proveable damages, and in opposition to plaintiff's pending motion requesting the instant action be determined as a class action on the ground there exists no aggrieved class members in possession of proveable damage claims.

The defendant HENRY, McCORD, FORRESTER & RICHARDSON is a law firm practicing in Tullahoma, Tennessee. While the firm is referred to in the prospectus of the issuer

AFFIDAVIT OF LESTER ESTERMAN, SWORN TO JULY 25, 1973, IN SUPPORT OF CROSS-MOTION

Southeastern Properties, Inc. as general counsel, I am informed by my clients that the firm was not involved in th preparation or filing, with either the Securities & Exchange Commission or the Attorney General's office of The State of New York of any of the material in issue in this litigation.

The defendant James Henry is a member of the defendant law firm and was secretary to the issuer from the organization of the company until June, 1972.

For the purpose of this motion and opposition to the pending motion for a class action determination, I adopt the affidavit of Arnold I. Burns, sworn to July 12, 1973, submitted in support of similar relief sought by the issuer.

It is the position of instant movant that plaintiff Stuart Wechsler by his execution of the release and acceptance of a full refund of the purchase price for 290 of the 300 shares of issuer which he purchased, as described in the Burn's affidavit, has extinguished any claim upon which this action can be based. The claim is extinguished because plaintiff has received the full measure of statutory damages under any theory and has no proveable damages remaining since he has knowingly

surrendered any rights he may have had by execution of the release. He is thus not a proper representative of an aggrieved class since he has no claim and his action should be dismissed.

Further, and for similar reasons, there now exists no aggrieved class because the entire putative class has been offered full rescission of the purchase transaction and elected overwhelmingly to accept it. The Burn's affidavit indicates that only 6,500 shares out of 200,000 did not accept the offer. We are informed that the owners of 193,650 shares executed releases identical in form to plaintiff Wechsler. It is submitted that this act constituted a waiver of any remaining damage claims any stockholders may have possessed.

The inaction of the remaining stockholders can only be deemed to have been an election to retain ownership. The tender offer constituted a method of resolution of the putative class claim, which was far superior to any class action since it did not subject the stockholders' recovery to a reduced refund due to attorney fees for plaintiff's counsel. An earlier decision of plaintiff's counsel in this case reflected the obvious practicality of this solution, for counsel in January of this year

elected to accept a "stay" of the class action determination rather than accept this Court's proffered denial of such status which would thus have afforded him grounds for an appeal at that time.

The instant defendants intend to vigorously defend this claim if it is to proceed, by asserting their statutory and other defenses. Such litigation would presumably be for the primary purpose of creating a fund for payment of counsel fees only, an obviously unintended statutory result of Rule 23.

The plaintiff and the purchasers of the issuer's stock have been afforded an opportunity to recover their full purchase price without diminution. It is submitted that the plaintiff and the putative class have been afforded more than their full federal rights by virtue of the tender offer.

Accordingly, plaintiff's motion for a class action determination should be denied and summary judgment awarded dismissing his complaint.

(Sworn to by Lester Esterman, July 25, 1973.)

ANSWERING AFFIDAVIT OF EDWARD LABATON, SWORN TO JULY 26, 1973, IN OPPOSITION TO MOTIONS.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

EDWARD LABATON, being duly sworn, deposes and says:

1. I am a member of the firm of Shatzkin and Cooper, attorneys for plaintiff in this action. I submit this affidavit in opposition to the motion of defendant Southeastern Properties, Inc. ("Southeastern") to dismiss the complaint and to assess the plaintiff with costs, including attorneys' fees, and of other defendants (relying in essence on Southeastern's papers) for summary judgment. In light of Southeastern's highly unusual application, it is appropriate to commence this affidavit by observing that Southeastern has by its tender offer virtually conceded that it flagrantly violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by issuing a false and misleading prospectus pursuant to which it took from the public $1,000,000. After the commencement

of this action, the denial of a motion to dismiss this action, the making of a class action motion, and the commencement of an action by the Attorney General (in that chronological sequence), it made the tender offer giving stockholders the opportunity to rescind. In light of those facts, Southeastern's suggestion that plaintiff should pay the defendant for prosecuting his claim to recover on his own behalf and on behalf of a defrauded class is an exercise in effrontery.

2. It is appropriate to briefly recapitulate prior proceedings and other background facts to put the case in proper focus:

(a) On May 2, 1972, this action was commenced. The action alleged two material misstatements or omissions: (i) the prospectus failed to disclose that Southeastern had failed to comply with the filing requirements of the States of New York and New Jersey as a result of which securities sold were not freely tradeable; and (ii) the prospectus failed to disclose the pendency of negotiations between Southeastern and Apollo Industries, Inc. The complaint was later amended to add that the prospectus failed to disclose that the assets reflected in Southeastern's financial statements were artificially inflated.

ANSWERING AFFIDAVIT OF EDWARD LABATON, SWORN TO JULY 26, 1973, IN OPPOSITION TO MOTIONS

(b) The motion by one of the defendants to dismiss the complaint was brought on before Judge Gurfein, was fully briefed and argued, and was denied in an opinion in June 1972.

(c) Following the amended complaint and on or about July 20, 1972, Southeastern filed an answer in this action denying all of the material allegations of the complaint.

It is significant to compare those denials with the averment in ¶4 of Mr. Burns' affidavit that "during the spring, summer and fall of 1972 he and his firm were negotiating with the Attorney General and were in frequent and constant communication in an attempt to resolve the Attorney General's objections to the public offering of Southeastern stock". I suggest to this court that by July 20, 1972 Mr. Burns and his law firm were fully aware that Southeastern had flagrantly violated the filing requirements of the State of New York and that its prospectus was otherwise deficient and the answer they interposed to the amended complaint was sham.

(d) By notice of motion dated June 20, 1972, defendants moved for a protective order which was in part granted and in part denied. It is significant that in

the affidavit of William L. Manning, a defendant and the Vice President of Southeastern, he indicated that Southeastern was fully engaged in the business of holding, developing and reselling real property in the States of Tennessee and Georgia, that its officers were "in constant communication with prospective buyers, contractors and developers of land", that it was "currently developing some properties in Rhea County, Tennessee", that it was "in constant communication on a daily basis with real estate brokers throughout the southeastern part of the United States in an attempt to learn of parcels of land which have just come on the market at favorable prices". In summary, in the affidavit Southeastern's vice president swears that Southeastern was actively working and moving forward selling and buying properties with no indication whatever that any effort would be made to dispose of properties and to give back to the public the million dollars which it had taken. That affidavit was sworn to on June 16, 1972, presumably long after Mr. Burns and his firm had begun their discussions with the Attorney General and a month and a half after this action had been commenced. Attached hereto as Exhibits K and L are copies of Southeastern's letters of

May 19, 1972 and June 22, 1972. These letters put in proper perspective the letter of March 27, 1972 (Burns Exhibit A) and demonstrate that prior to the class action motion we had no reason to believe that a rescission offer would be made.

(e) A motion to have this action declared a class action was made on August 4, 1972. A month before that motion was made, the company had indicated in a letter to the stockholders that it was exploring the possibility of a rescission but it was also exploring "the continuation of the company's business for the time being". And in the affidavit of Mr. Manning referred to above, Southeastern indicated that it was actively engaged in the business of developing, selling and buying property. It was not until August 14th, ten days after the motion was made, that Southeastern informed its stockholders that it had adopted a resolution to attempt to liquidate its properties and to make a rescission offer, and even then it stated that "no assurance can be given" that the company could generate sufficient revenues to make rescission feasible. This letter came 3-1/2 months after the commencement of this action; it followed commencement of

discovery of plaintiff; it followed the class action motion and it preceded the Attorney General's formal proceedings by several months. Yet, we have Mr. Burns' solemn assurance to this court that this action had nothing to do with the making of the rescission offer.

(f) Mr. Burns introduces a double hearsay statement at p. 11 of his affidavit asserting that he is informed by Mr. Cherovsky that Mr. Dolan advised Mr. Cherovsky that Mr. Dolan recalled advising me that the office of the Attorney General was proceeding to secure the return of the fund obtained through the public offering and stated that his office "could do nothing to directly prevent the maintenance of a civil action". The fact is, that the first conversation I had with Mr. Dolan was on or about June 30, 1972, almost two months *after* our action had been commenced. I called him to advise him that we had commenced a class action and I described that action and its status. I asked him whether he could supply me with any information that would be available to the public with respect to Southeastern and he told me that the Attorney General was looking into the situation. He asked me for a copy of the amended complaint, which I sent him on June 30, 1972, together with Judge Gurfein's

opinion. Contrary to Mr. Burns' averments, Mr. Dolan did not say, in words or in substance, that his office would do nothing directly to prevent the maintenance of a civil action. Instead, he wished me good luck in the prosecution of the action. Thereafter, I called Mr. Dolan a few times to ascertain the status of his investigations. In not one of these conversations did Mr. Dolan suggest that it was inappropriate for us to continue prosecuting the class action. In September Mr. Dolan informed me that his office was interested in obtaining a rescission of the public offering and he sent me copies of his affidavit and motion papers in the Supreme Court after they were filed in September 1972. It is difficult for me to understand how our action, which preceded the Attorney General's by four months, was "redundant" (Burns' affidavit ¶4). It would appear that Mr. Burns is attempting to create the misleading impression that the Attorney General opposed our action but could do nothing to stop it.

3. Mr. Burns implies that it was improper for us to communicate with this court and at the suggestion of this court to communicate with the Supreme Court of the State of New York. The very notion that such communications interfered with defendant's rights is an affront

to due process, and the right of access to the courts. Mr. Burns asserts that "there was not one word of dialogue relating to a proposed resolution of the claim". We commenced our action; we prosecuted it diligently; defendants chose to make a rescission offer, presumably with knowledge of the merits of the case.

4. Finally, the defendants congratulate themselves upon their diligence in the rescission offer and in obtaining acceptance of a tender offer from 96.75% of the offerees. In view of the fact that there were less than 200 shareholders of record and trading was suspended immediately after the offering, it is appropriate to question the defendants as to what efforts were made to assure that 100% of the shareholders were notified. The advertisements were miniscule. There is no indication of any extraordinary efforts to contact those who did not tender their stock and there is no indication that those who failed to tender had actual notice of the rescission offer. This was not, as Mr. Burns suggests, simply a public company communicating with its stockholders (Burns' affidavit ¶18). This was the case of a company having perpetrated a gross fraud, making an attempt to pay back the fruits of the fraud. In that context, I can

suggest two devices used in cases in which I have been involved: In the *Lyons v. Marrud* case, CCH Fed. Sec. L. Rep. ¶93,525, in which I was lead counsel for the class and appointed by Chief Justice Edelstein to administer the settlement, I hired The Tracers Company to obtain lists of addresses where letters had been unclaimed. Such a procedure might have been appropriate in this case if there were any unclaimed letters. In *Feder v. Harrington*, 58 FRD 171 (S.D.N.Y. 1972), in which we represented plaintiffs, we obtained a series of orders directing brokers to give the names and addresses of the beneficial owners of stock. The beneficial owners could be directly contacted and given notice of the settlement. Although that procedure was suggested by me to the defendants in the letters to this court and to Justice Dickens, it apparently was not followed.

5. In summary, the facts clearly demonstrate that it was quite appropriate that this action be diligently prosecuted and it appears that this action was a major factor in Southeastern's decision to rescind the fraudulent sale of securities to the public.

Wherefore, I respectfully request that defendants' motions be denied.

(Sworn to by Edward Labaton, July 26, 1973.)

EXHIBIT K, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED MAY 19, 1972.

Southeastern Properties, Inc.

May 19, 1972

TO: SHAREHOLDERS OF SOUTHEASTERN
PROPERTIES, INC.:

Gentlemen:

By letter dated March 27, 1972, and sticker attached to the Final Prospectus, we notified you that:

(a) The Attorney General of the State of New York had informed us that a problem existed with the filing made under the "Blue Sky" laws of New York, and

(b) At the verbal direction of the Attorney General, trading in the stock of the Company had been temporarily halted.

Promptly after such action was taken by the Attorney General, the Company deposited the balance of the proceeds of the offering (approximately $600,000.00) in a special account and advised its stockholders that the fund would remain intact until some resolution of the problem had been made.

We have cooperated fully with the Attorney General's office in its review of the filing. However, despite frequent requests by us to have the matter resolved expeditiously, the Attoreny General's office has advised us that its review of the matter has not been completed.

It is now apparent that what we initially had viewed as a temporary problem will continue for a much longer period than we had anticipated. The continuation of the above special account, which has required us to defer making payments to creditors, including mortgagees, has become untenable and threatens to seriously impair, if not destroy, the Company's operation. Accordingly, the Board of Directors has decided to authorize the payment from time to time of the various commitments of the Company, including the payment of approximately $67,000.00 through June 1972.

EXHIBIT K, ATTACHED TO AFFIDAVIT OF EDWARD LABATON

On May 2, 1972, a class action was instituted in the United States District Court for the Southern District of New York against the Company, its directors and counsel, Monarch Funding Corp. (it's underwriter) and underwriter's counsel. The major allegation of the complaint asserts that the Registration Statement and Final Prospectus of the Company did not disclose that certain filings were required with the Attorneys General of New York and New Jersey and that, since such filings were not made, the securities sold were not freely tradeable. The Company is taking steps to defend this action and believes it has meritorious defenses to the allegations.

The Company is actively investigating various methods of resolving the problems which now face it. Please be assured that we shall keep you promptly apprised of key developments as they occur and expect to communicate with you again within the next two weeks.

Yours very truly,

SOUTHEASTERN PROPERTIES, INC.

BY: Anthony J. DeMatteo
Anthony J. DeMatteo
President

EXHIBIT L, ATTACHED TO AFFIDAVIT OF EDWARD LABATON--
LETTER DATED JUNE 22, 1972.

(Reproduced, *supra*, at pages 177a to 178a as Exhibit B, Attached to Affidavit of Edward Labaton, Sworn to October 12, 1973.)

REPLY AFFIDAVIT OF ARNOLD I. BURNS, SWORN TO JULY 30, 1973.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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SAME TITLE

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State of New York,

County of New York, ss:

ARNOLD I. BURNS, being duly sworn, deposes and says:

1. I submit this affidavit in reply to the affidavit of Edward A. Labaton, counsel for plaintiff Wechsler, and the other papers submitted in opposition to defendants' motion to dismiss the complaint and to assess the costs of this action against plaintiff and his counsel.

2. The papers submitted in opposition are an attempt to obfuscate the facts relating to this action and those pertaining to the proceedings before the Attorney General of the State of New York. Mr. Labaton's attempt to demonstrate that plaintiff's activities in any way contributed to the tender offer of Southeastern Properties, Inc. ("Southeastern") are the conclusory statements (Labaton Aff. p. 5) that Southeastern's offer followed commencement of discovery by plaintiff, that the offer followed

the class action motion, and that it preceded the Attorney General's formal proceedings by several months. It is not "Mr. Burns' solemn assurance to this court that this action had nothing to do with the making of the rescission offer" which demonstrates that plaintiff did not contribute to the resolution of this problem (Labaton Aff. p. 5); the facts speak for themselves:

(a) Plaintiff's counsel never examined Southeastern or any of its officers or any other person.

(b) This Court never granted plaintiff's motion for a determination that this action should proceed as a class action.

(c) The Attorney General's proceedings commenced in March, 1972, almost two months prior to this action. That no suit was commenced until afterward is attributable solely to the fact that Southeastern and the Attorney General were trying to resolve the matter; they were not able to do so until sometime in the late fall of 1972.

3. It is clear from my prior affidavit (page 3) that the entire basis of plaintiff's claim in this action was derived from information received by plaintiff from his broker who in turn no doubt received his information from the Attorney General who communicated with all brokers

at this time concerning the public offering. The letters written by Southeastern, which Mr. Labaton attaches to his affidavit, clearly demonstrate that the Attorney General had commenced the investigation in March, 1972 (Labaton Aff. Exhibit K). The Southeastern President's letter of June 22, 1972 (Labaton Aff. Exhibit L) states the position of Southeastern from the outset:

> "The route which the Company follows is, in our view, substantially dependent upon the position which the Attorney General takes concerning its review of the Company's blue sky filing. We anticipate that we shall shortly ascertain that position with some degree of certainty and that we will then be in a position to move to implement the decision reached. Of course, as in the past, we will keep you promptly apprised.
>
> * * *
>
> "It is unfortunate that the actions of the New York Attorney General's office have interrupted the normal course of the Company's business. We are most appreciative of your

> patience and are hopeful that we can advise you shortly of the action we expect to take to resolve the outstanding problem. Please feel free to contact our office at any time."

The above letter from the President of Southeastern clearly demonstrates that negotiations with the Attorney General were in progress from March, 1972 and thereafter and were the only negotiations ever held which led to the resolution of the underlying dispute. Mr. Labaton presents no contrary evidence except a conclusory surmise which is unsubstantiated by any facts.

4. The statements by Mr. Labaton that the tender offer amounts to an admission of fraud is also unsubstantiated by anything more than Mr. Labaton's say-so. Southeastern's consent to the entry of the injunction states:

> "This consent is in no way intended, for this or any other proceeding, to be construed as an admission of any of the charges contained in the complaint, affidavit or otherwise."

Mr. Labaton's assertions of flagrant violations of the Securities Act of 1933 are nowhere substantiated in the papers. The Securities and Exchange Commission, which

has been apprised of all developments on a current basis, apparently disagrees with Mr. Labaton's characterization, in fact, the Securities and Exchange Commission issued the "no-action" letter which permitted Southeastern to make the tender offer (Burns Aff. p. 4). It always has been Southeastern's position that the filings which it made with the Attorney General's office and the Secretary of State of New York complied with the Martin Act; that is the position of Southeastern today. Contrary to plaintiff's assertions that no papers were filed with the Attorney General (Amended Complaint, Pars. 18 and 19), this dispute has always centered on whether the papers filed complied with applicable blue sky law. The Southeastern tender offer, which offered to purchase the outstanding stock held by public shareholders, was made to resolve the dispute which had been sapping the time, energy and funds of the Company. To assert that this was an admission of wrongdoing is both silly and pernicious; if such an offer constitutes an admission of wrongdoing, there would be a tremendous compulsion not to resolve disputes such as those in which Southeastern found itself in this matter. Mr. Labaton's assertions of wrongdoing based on the making of a tender offer are

nothing more than a substitute for evidence which is totally lacking in the opposing papers. In light of the foregoing, it is incredible that Mr. Labaton asserts -- again without any basis in fact -- that the answer of Southeastern in this action was "sham" (Labaton Aff. p. 3).

5. Mr. Labaton dwells at considerable length throughout his affidavit and memorandum of law on Southeastern's decision to lift the freeze of its assets following its initial conversations with the Attorney General concerning his objections to the offering. The decision to hold the funds intact was made on March 27, 1972, at which time it was contemplated that the matter would be quickly resolved. That decision was revoked a month and a half later -- on May 19, 1972 (Labaton Aff. Exhibit K) -- when the President advised the shareholders of the following:

> "It is apparent that what we initially had viewed as a temporary problem will continue for a much longer period than we had anticipated. The continuation of the above special account, which has required us to defer making payments to creditors, including mortgagees, has become untenable and threatens to seriously impair,

> if not destroy, the Company's operation. Accordingly, the Board of Directors has decided to authorize the payment from time to time of the various commitments of the Company, including the payment of approximately $67,000.00 through June 1972."

Mr. Labaton has attempted to suggest that there was some sort of impropriety involved in using the funds of the Company to pay creditors and mortgagees. Indeed, the contrary is the case. It would have been gross mismanagement if Southeastern had allowed its land holdings to be sold at auction because of default in mortgage and tax payments. On the contrary, the decision made by Southeastern was extremely beneficial to its shareholders and to Southeastern since it permitted the making of the tender offer and its almost 100% consummation.

6. We can find no authority for the proposition that a complete repayment of shares purchased by a purchaser at the initial purchase price and the execution of a general release by such purchaser does not constitute a general release of all of such purchaser's claims. Mr. Labaton's assertion that such release is not a valid release is frivolous. Were it otherwise, there could be

no end to claims made by stockholders relating to the purchase of shares of capital stock of the company. Similarly, Mr. Labaton's claim asserted in his memorandum of law that the action before this Court was not redundant is not supported either by the facts surrounding this matter or by the law. Although the maintenance of several actions at the same time by a governmental agency seeking injunctive relief and by civil litigants may be appropriate under certain circumstances, it is not appropriate, where, as here, the government seeks -- and obtains -- the same relief sought by the civil litigant. This actions always has been redundant and has never accomplished a single thing except to burden this Court and counsel to defendants with unsubstantiated charges, conclusory allegations, and unnecessary paper work.

WHEREFORE, defendants request that the complaint be dismissed and that costs be assessed against plaintiff and his counsel for the reasons set forth in this affidavit and the defendants' moving papers.

(Sworn to by Arnold I. Burns, July 30, 1973.)

TRANSCRIPT OF HEARING HELD JULY 31, 1973.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

STUARD D. WECHSLER,

Plaintiff,

v. 72 Civ. 1813

SOUTHEASTERN PROPERTIES, INC., et al.,

Defendants.

BEFORE:

HON. WHITMAN KNAPP,
District Judge,

July 31, 1973
9:30 a. m. - Room 618

APPEARANCES:

SHATZKIN & COOPER, ESQ.,
Attorneys for Plaintiff,
BY: EDWARD LABATON, ESQ., Of Counsel.

THOMAS DOLAN, ESQ.,
Assistant Attorney General for the State of New York.

SCHWARTZ, MERMELSTEIN, BURNS, LESSER & JACOBY, ESQ.,
Attorneys for Southeastern Properties, et al;
BY: ARNOLD I. BURNS, ESQ., and
CARL BARTHOLOMAUS, ESQ., Of Counsel.

HOWARD J. GOLDSTEIN, ESQ.,
Attorney for Defendants Schneider and Berratta,

HART & HUME, ESQ.,
Attorneys for Defendants, James Henry and
Henry McCord Forrester & Richardson
BY: CHARLES J. ACKER, ESQ., Of Counsel. "

MARTIN FRIEDMAN, ESQ.,
Attorney for Monarch Funding.

THE COURT: Before the reporter entered the room the defendant had made a brief oral statement in support of a motion for counsel fees against the plaintiff. Reference was made to the motion to dismiss the complaint. At this point I have called upon the plaintiff to address himself to the motion to dismiss the complaint.

MR. LABATON: Your Honor, as I noted, it would be a very simple way to bypass the rule --

THE COURT: The court has called the plaintiff's attention to the fact that the papers include a general release by the plaintiff in favor of all the defendants, and I ask counsel --

MR. LABATON: Your Honor, it would be a simple way to bypass Rule 23 and the Securities Act of 1933 and the Securities and Exchange Act of 1934, to pay off plaintiffs and have them get general releases. In this instance plaintiff would withhold, as a technical matter, ten shares. He withholds that. He is not releasing at to that.

THE COURT: As I read the general release it is a total release of all the plaintiffs.

MR. LABATON: I think Cohen versus Penny is dispositive of that insofar as it was withheld. Cohen against Penny says that you don't release Securities Act claims by general releases where you are defrauded, and I have a copy of

that case right here. I would be glad to hand it up to the court. It was cited in our brief. I would like to pass that.

I really think this case should be dismissed in the relatively near future because I think there are only two procedures that need be followed, and we need not go through the class action.

THE COURT: I have withheld any class action determination.

MR. LABATON: I understand that, but I do not think we have to go through that determination. I do not think we have to go through the procedures.

I acquiesce to your Honor's suggestion that it be deferred because contrary to Mr. Burns' assertion, I have not tried to duplicate the work of the Attorney General. I have not tried to make excessive motions.

I made the motion a month before the Attorney General commenced his action. The first argument was before the tender offer was made.

I recognize that the Attorney General's action was beneficial to the stockholders. Bythat action most of the stockholders have been paid. The action to that 96.75 percent is moot. There are two questions only in this case and that is whether it is moot and whether there was adequate notice given to the balance of stockholders. I have addressed myself

to that in the brief. We don't know whether they were given adequate notice.

I don't think notice to brokers in this context was adequate.

If the stock held by that percentage of stockholders was held by brokers, I would suggest to the court a simple device which presumably counsel interested in disposing of this case in an equitable manner would be able to work out -- I am referring to a case in which I was involved before Judge MacMahon in a class action.

What we did, your Honor, we sent an order to the broker saying, "give us the names and addresses of the beneficial owners of this stock."

Then we sent the notice directly to those beneficial owners. That could be done, and that part of the case could be handled in that matter and not entail great expense or effort, because there are only 7,000 some odd shares, I assume.

The other aspect in the case is the question of fees of counsel, and as to that we fully briefed the proprietary and justification to fees. It is to that that I ought to address myself because not only in the papers -- and we have documented this beyond a shadow of a doubt -- but in this court the defendant attorneys have distorted the fact beyond any semblance.

THE COURT: Before you get to the second point, what does the Attorney General say about the notice? Apparently the plaintiff claims a small percentage of stockholders didn't get a copy of the notice.

MR. LABATON: I really don't know.

MR. DOLAN: It is my understanding, your Honor, the tender offer itself was handled by Bankers Trust. It is my understanding that they got a list from the transfer agent of all the record holders. A great deal of the stock is still in street name. Some of these firms had gone out of business. They have made every effort, as I understand it, to contact both the brokers and the individuals. We have had a lot of individual complaints on this matter which we always referred to Bankers Trust directly or to Mr. Burns' firm for handling.

So far as I am aware, at the moment these people have all been taken care of. There are a few blocks of stock, I guess, where, for certain legal reasons, they are still waiting for some supporting documents before they release the money.

There were, at our requests, some ads placed in the Wall Street Journal and The New York Times. They were not half page ads, but they were small ads put in there for the purpose of anybody who might not have been contacted. It would appear to me that they have made an effort, a good effort here, to

contact all the people.

At least, so far as our office is concerned, all the people that we have been in contact with is received --

THE COURT: Thank you.

MR. LABATON: I would suggest a very simple device to handle this, your Honor. We ought to get a short list, namely those persons who have not tendered the stock.

THE COURT: I think you should make that suggestion to the Attorney General.

MR. LABATON: I do here and now. I would suggest you get a list of those who have not tendered the stock and ascertain --

THE COURT: I do not think it is appropriate for you or me to put the Attorney General on the spot in this court. My inclination would be to leave these details to the Attorney General for you and he to work out.

MR. LABATON: There is one further point, your Honor.

MR. BURNS: With great respect, I must state, as anyone having experience in this matter would know, to get 100 percent is practically impossible. I want the court to know I supervised the handling of this matter, and we have gone completely beyond the full duty in running down beneficial holders.

THE COURT: I understand that.

MR. BURNS: The only point I make is that our office, working hand in glove with the Attorney General is perfectly competent to handle the matter. It has been handled. We don't need any additional suggestions. We do know what to do.

THE COURT: The Attorney General can take suggestions if he sees fit.

I may say with respect to the papers that I don't really think you have made a case for harassment. On your claim for fees you have an interesting claim.

MR. LABATON: I will address myself to that.

We commenced this action on May 2 of 1972. The defendants say that I was told by Mr. Dolan that the Attorney General was investigating and was demanding complete repayment of all the funds taken from the public, back to the public. That statement simply is untrue. It is a double hearsay statement. I can pinpoint my very first conversation. It was within the week following my argument before Judge Gurfein, which was on June 20. I believe it was probably on June 27. It might have been the 26th or the 28th. It was just a few days before June 30.

By that time, by my very first conversation with Mr. Dolan, we had commenced the action and had argued a motion

to dismiss. I believe we had served interrogatories, served notices of depositions, and then some other things.

They also distort the substance of my conversation with Mr. Dolan and I am prepared to describe that to the court right now.

I called Mr. Dolan because someone walked over to me in the argument before Judge Gurfein and said, "I heard your argument. There is an Attorney General's investigation that you ought to know about." He characterized the case as being fraudulent and he told me, "You ought to call Mr. Dolan." That was the first time I heard his name, and I wrote it down in my diary.

I called him. I couldn't reach him that day. I called him next week or possibly the end of that week. I told him we had started this action and that I was interested in getting any information which would help us and would not violate any aspect of his own administrative rules. I didn't want to be improper in any respect.

Mr. Dolan told me that there was an investigation; he could not tell me much more. He asked me whether I would send him a copy of my amended complaint. I did.

By that time Judge Gurfein's opinion came down, so I sent him a copy of that. I kept in touch with him. He at no time suggested that I shouldn't prosecute the action,

that it was improper, that they were demanding the funds. He did tell me that three or four months later but not in May or June.

THE COURT: Let me interrupt here.

In a case, the name of which I don't remember, there was an action before me where an attorney sought counsel fees for work he had done before the SEC. I don't remember the name of thecase. I am terrible on names. All I know is that the Pomerantz firm was representing the defendant opposing fees and the whole building shook most of the time. In any event, I ruled on that case that the attorney was not entitled to fees for supporting the SEC. That case is on appeal and has been argued in the Court of Appeals. It is not determinative. I understand it is not the same, but similar issues are involved and you may be enlightened. If I am reversed you will then find it less distinguishable.

MR. LABATON: Obviously, your Honor.

THE COURT: If I am affirmed there may be language which will shed light on our problems. It seems to me that the problem, as I see it, if in fact this action is not turned out that they have been productive either in spurring the Attorney General, of assisting the Attorney General of taking notice of things that went on in this court, it seems to me you would have, might well have, a persuasive argument that you

were entitled to fees.

MR. LABATON: The Attorney General has his own motivations.

THE COURT: I don't think spurring on the Attorney General --

MR. LABATON: That's not the basis of our claim.

THE COURT: If it was of assistance to the Attorney General.

MR. LABATON: I'm not suggesting that. I am suggesting on spurring the defendants. They had to settle the case. If they didn't settle with the Attorney General they were going to have to deal with this court in the case in which there was liability.

THE COURT: Then you are suggesting that the Attorney General didn't have enough power to bring about settlement?

MR. LABATON: It is entirely possible that there could have been joint liability under the Martin Act. It is almost certain. There is liability under the state law and there is liability under the federal law. There was not going tobe two collections of a million dollars. There was going to be one. Judge Gurfein held that they had violated the state law then they also violated the federal law. That's the holding in this case and it is the law of this case. He held that in a

decision on a motion to dismiss. If they had violated the state law, then, irrespective of the Attorney General, in this court they would be libel; so what I am saying is not that the Attorney General was spurred on. I don't think he needed us. I think his office is busy enough to do productive things. I guess the Attorney General was harassing and vexing him. The fact is you don't give one million dollars back when you only have $850,000 net, unless there is a pretty good case of liability, and the Attorney General would not have asked for a million dollars back if they had failed to dot a couple of eyes and cross the Ts in their prospective.

There was gross fraud in this case, and that gross fraud subjected them to liability in both the state law and the federal law. The Attorney General acted, and he acted informally, and formally after. During the course of their negotiations with the Attorney General -- and I must say contrary to the record the facts in this case didn't come to it when the Attorney General made his demands upon them which they say took place in March, April, May, June, July, August, and September -- they didn't capitulate to the Attorney General until September or later because the Attorney General was compelled to bring an action in the state court in September of 1972.

I don't suggest that Mr. Burns has tapes in his

office where we know what conversations were had, but the objector fact is that this lawsuit which stated a good claim, Judge Gurfein so held, was hanging over their head and they knew if they did not settle with the Attorney General they would have to deal with us. I say that in that sense we produced a distinctive result and we should be compensated for our services.

We are a business, as Mr. Burns said. We were conducting a proper business for the benefit of the stockholders against the defendants which had committed a gross fraud, and when they perpetrate a gross fraud and when a stockholder sues them and catches them and prosecutes the action with propriety, as we have, then he is entitled to be compensated when they pay back and they can't say, "All right, fellows we got caught, we committed the fraud -- although we will say we did it when we signed the papers -- we will give back the million dollars and you fellows go away, disappear; you don't have to be paid because we are paying back through another medium."

I think that misconceives both the purpose of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rule 23. I think that in this case, and I think certainly within the meaning of the Miles case, the Cahan case, the City of Detroit versus Grinnel case, which Judge Metzner

decided, we are entitled to compensation on the documented facts that are set forth in our papers.

MR. BURNS: I'll be brief, your Honor.

I am a little surprised at my distinguished adversary for stating very boldly that there has been a gross fraud in this case. There have been no findings of fraud. I suppose the only support he has for that are his own bare allegations.

THE COURT: He says when you pay a million dollars you don't do it unless you have to.

MR. BURNS: I don't think that's a fair inference under the circumstances.

What happened here, your Honor, is that the Attorney General took a position which I disputed, that there was an outright violation of the statute. It has nothing to do with fraud or anything else. It was failure to file with the Office of the Attorney General. That's what this case was all about.

I don't know whether my distinguished adversary has ever had a matter of this sort with the Attorney General, but I can say that they required no stimulation, no additional motivation, to see that this result is obtained. I am here to say we cited cases in our brief that say the appropriate time for the awarding of counsel fees was where counsel had contributed to the resolution of the case, contribued to the

establishment of a fund, and so on -- and I am not going to be repetitive because I defer to your Honor on the subject.

Mr. Dolan is here and we are both here to say that this matter was resolved wholly and independent of this action.

MR. LABATON: May I make one point in response?

THE COURT: There is someone behind you.

MR. GOLDSTEIN: Your Honor, I am Howard Goldstein. I represent the Defendant Schneider and Berratta.

Your Honor, I hate to be repetitive, but I made this statement before in this court. This registration became effective at the end of March. Plaintiff started this action May 2. That's the date of the papers. Presumably the papers had to be researched and drawn up so some place in April, in other words, two weeks after this issue came out, plaintiff had a class action.

By Mr. Labaton's own statement that papers in the file his client, who was a lawyer specializing in this kind of lawsuit, heard from a broker on the street that the Attorney General had stopped trading. That was the sole basis of this lawsuit.

THE COURT: I understand. His claim is that the pendency of this action had an affect on you and your colleagues which made it easier for the Attorney General to deal with you. Mr. Dolan can't answer that question. I'm not sure I

have to ask that question. That is the contention.

MR. GOLDSTEIN: Except, your Honor, Mr. Labaton claims there is fraud in everything else, and that we would have had to deal with him and he would prove it, et cetera.

The point of the matter is that he started this action without talking to anybody in the Attorney General's office as to the basis: Was there a fact? What were you claiming? He just started an action without knowing anything. He started an action just on rumors.

Then he comes in and says, "We allege this so it must be true. We have proof of fraud." He doesn't have anything. He didn't conduct any examinations.

THE COURT: I told him not to.

MR. GOLDSTEIN: He can't possibly know if he can prove the case or if there is a case. He doesn't have anything but a complaint in his file basically, and for him to come in now and say there is no doubt there is a fraud because Southeastern paid back one million dollars, why, if this case were tried next week, or two weeks from now, or today he would not know where to begin. I say this with all due respect to him. He doesn't have anything in his files to prove one thing one way or the other.

MR. LABATON: Your Honor, I have something. I have Mr. Dolan's affidavit and I am sure that that is based on

sufficient documentary evidence for me to prove my case. Mr. Dolan's affidavit was annexed to Mr. Burns' affidavit submitted in this court in opposition to the class motion. I want to bring that affidavit to your attention because that affidavit documents far more than just a bare file. It documents gross fraud, and I am sure MR. Dolan did not write it flippantly and not loosely and didn't write it off the top of his head.

The defendants did commit a fraud. There is evidence. We could prove the fraud. As a matter of fact, if it is conditional upon our getting a fee that we take depositions, we are ready to take the depositions.

THE COURT: Let me recapitulate where I think we stand, and please don't be embarrassed to tell me if I am misremembering the facts.

When the case first came to me, as I recollect it, plaintiff was pressing for a determination of the class action. I declined to make that determination not because I didn't think the class was appropriate, not because I didn't think that that type of action was valid, I wouldn't go into that, but I ruled the case did not meet the qualifications of the rule. There was not a more suitable vehicle available for determination of this issue. The Attorney General had a parallel, a different action, pending.

Then we had another hearing where the plaintiff

suggested in various ways in which the Attorney General's action was less effective than this action was. There were interest charges the Attorney General could not get that the plaintiff could get through this action. There were incidental benefits available in this action that were not available to the Attorney General.

As I recollect, I ruled in substance that if the plaintiff and the defendants presented to me a settlement along the lines that the Attorney General had worked out, I would undoubtedly find that that was the proper settlement.

The Attorney General has continued and has concluded the action to everybody's satisfaction. There are minor differences which I will not go into because it is his responsibility and not mine.

That raises, as I see it, a very narrow issue. I am willing to assume for the sake of this discretion that in the real world the fact of the pendency of this action had an affect on the thinking and acting of the defendants which effect made the Attorney General's life easier. I am not passing on whether the Attorney General could or could not have produced the same result. For the present purpose I will assume, arguendo, that the pendency of this action has an affect on what the Attorney General was able to accomplish, not because it decreased its powers but because he needed any power

that this action threw his way and simply because the pendency of this action had a psychological affect on the parties with whom he was negotiating.

The question presented in this: There having been no determination of class status to date because of the reason stated is the plaintiff entitled to ask the court to make findings: Is there entitlement to a few?

Does anybody think I misstated?

I'm asking this not by way of challenge but by way of information. Does anybody think I misstated the proceedings to date?

MR. ACKER: No, sir.

Your Honor, I am Charles Acker and I present the defendants James, Henry, McCord, Forrester, and Richardson. I don't think you misstated the facts at all.

There is one thing I would like to put in perspective on behalf of my clients and Mr. Goldstein's clients. We areappearing in this court because our clients were named as defendants. We did not participate in the settlement at all. We had absolutely nothing to do except to sit on the side lines.

I must strenuously object to any finding against my clients. I am not making any finding at the moment.

MR. ACKER: At any point, your Honor.

THE COURT: I am postulating the question as to whether, assuming such a finding, would the plaintiff be entitled to relief?

MR. ACKER: What I am suggesting is because you have been limited further against the defendant Southeastern.

THE COURT: If I answer this question in the affirmative that I do have to make such a finding, then we will consider which defendants will be involved.

MR. BURNS: With great respect, your Honor, I have no fault with your tracking the proceedings, but I want to take exception if I may, to the conclusion that there was some kind of contribution here.

THE COURT: I am only making that arguendo.

MR. BURNS: I want to say this because we live in a real world. Let's approach it from the point of view of living in a real world.

The fact of the matter is that there is a very substantial law question. I had a leading case in the New York Court of Appeals some years ago on this issue. As to whether or not under a violation of this statute a private party would be entitled to a decision, it is a substantial question of law.

If it were not for the very swift and very agressive action by the Department of the Attorney General in this case,

this case would have been litigated until the cows came home on that law question and on the factual questions as to whether or not there was anything that went beyond the mere lawyer's mistake in failing to file.

The fact of the matter is that the reality of the situation is just the opposite. Had this action been brought we would be having discovery and all of the procedures, we would avail ourselves of all of the procedures, of this court. The fact of the matter is that because of the august power of the office of the Attorney General this matter was resolved promptly.

THE COURT: That merely goes to the merits of the arguendo assumption I made which we will have to go into.

Do I properly state the question as you understand it?

MR. BURNS: Yes, your Honor.

THE COURT: Having stated that question I am going to reserve decision on it. I will invite any further briefs the parties may wish to address to that particular question. I intend to keep on reserving decision until the Court of Appeals acts one way or the other on the other case.

MR. LABATON: Can we ask your cler for the name of the citation, your Honor?

THE COURT: Whether he knows it now I don't know.

MR. LABATON: Can I call chambers?

THE COURT: Yes. It is pending, that's all I know. As I say, if they reverse me it is a less distinguishable case.

MR. LABATON: I would like to read that.

THE COURT: I have no opinion.

MR. LABATON: There was a case before Judge Curfein who made a decision as to lead counsel based on that set of facts. It may have come before your Honor later on the aplication of fees.

THE COURT: That doesn't ring a bell with me.

MR. LABATON: As a matter of personal privilege, and only that, I am leaving on a holiday Thursday.

THE COURT: So am I.

MR. LABATON: I won't be back for a couple of weeks.

THE COURT: I am leaving on a Holiday Thursday. You will have to find out from my clerk the name of the case that I am referring to. Wait until that case comes down, which would be, I guess, the fall. In the meantime, I assume the Attorney General will be through and it is my intention to dismiss the action at that time on the basis --

MR. LABATON: I would like your Honor not to return on that until I have had an opportunity to communicate with the

Attorney General on this one small --

THE COURT: I will do the whole thing at the same time.

MR. FRIEDMAN: Your Honor, we have a cross motion to submit. We didn't realize we were late for this. It does not prejudice any of the parties. We were the only defendants that had not submitted a cross motion.

MR. LABATON: I have no objection, your Honor.

MR. FRIEDMAN: The cross motion is, in essence, dismissing the action. It is the same motion submitted by all the defendants

THE COURT: All right.

- - -

SUPPLEMENTAL AFFIDAVIT OF EDMUND PREISS, SWORN TO OCTOBER 4, 1973, IN SUPPORT OF CROSS-MOTION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- - - - - -

SAME TITLE

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State of New York,

County of New York, ss:

EDMUND PREISS, being duly sworn, deposes and says:

1. I am an officer of the firm of Kane, Kessler, Proujansky, Preiss & Permutt, P.C., attorneys for the defendant, MONARCH FUNDING CORP. ("Monarch") in the above entitled action and I make this Supplemental Affidavit in support of Monarch's cross-motion for summary judgment to dismiss the complaint as against said defendant and in opposition to plaintiff's counsel's application for counsel fees. The Court's attention is respectfully invited to my affidavit sworn to on July 30, 1973, submitted in support of Monarch's motion and the affidavit of Arnold I. Burns, Esq., sworn to on July 12, 1973, referred to therein.

2. This affidavit is submitted to more specifically oppose the application for counsel fees as against Monarch. At the time the original papers were submitted,

SUPPLEMENTAL AFFIDAVIT OF EDMUND PREISS, SWORN TO OCTOBER 4, 1973, IN SUPPORT OF CROSS-MOTION

the case, on all fours with outs, of *Grace et al. vs. Ludwig et al. (Ludwig)* was pending before the United States Court of Appeals for the Second Circuit and determination of the counsel fee question was reserved pending the decision in that case. The Court of Appeals decision was decided on September 12, 1973.

3. It is respectfully submitted that the *Ludwig* decision is dispositive of the counsel fee issue in this case. The issue of counsel fees in both cases is based on the same set of facts; namely, that after a governmental agency commenced proceedings against a corporation (which eventually resulted in the rescission of the corporate action solely as a result of the efforts of the governmental agency and the named corporation), a law firm, voluntarily, commenced proceedings on behalf of a civil claimant, maintained the action concurrently with the governmental proceeding and then claimed that counsel fees were owing to it because in some way it was responsible for the outcome of the governmental proceeding. In *Ludwig*, a Security and Exchange Commission proceeding resulted in the withdrawal by a corporation of an application for an exemption under Section 17 of the Investment Company Act of 1940. Here, an action commenced by

SUPPLEMENTAL AFFIDAVIT OF EDMUND PREISS, SWORN TO OCTOBER 4, 1973, IN SUPPORT OF CROSS-MOTION

the Attorney General of the State of New York resulted in defendant, Southeastern Properties, Inc. ("Southeastern") rescinding an offer of a sale of stock.

4. The following chronology of relevant events clearly shows that the fee application is unwarranted and should be denied. The Southeastern offering was offered and sold in New York State pursuant to Blue Sky Filings made in New York State. A Prospectus had been filed with the Securities and Exchange Commission and declared effective on January 31 of 1972. However, sale of the stock did not commence until on or about March 17, 1972. On or about March 20, 1972 trading of the stock was suspended by action taken by the Attorney General of the State of New York under Article 23-A of the General Business Law because of certain alleged irregularities relating to Southeastern's Blue Sky Filings in the State of New York.

5. On May 2, 1972, a month and a half after the Attorney General suspended trading, plaintiff with full knowledge of the fact that the Attorney General was proceeding to effect the return of the purchase price of any shares sold to Southeastern's public shareholders, commenced this action.

SUPPLEMENTAL AFFIDAVIT OF EDMUND PREISS, SWORN TO OCTOBER 4, 1973, IN SUPPORT OF CROSS-MOTION

6. Resolution of all problems concerning Southeastern's public offering was effected, through no effort of plaintiff, by entry of a consent injunction on December 21, 1972 which provided for a tender offer. I am advised that pursuant to that consent injunction, reached between the Attorney General and Southeastern in the Attorney General's action, the tender offer has been effected rescinding the issue which is the subject matter of this needless law suit. It may be noted that plaintiff herein took advantage of that tender offer except for the retention of ten shares of stock which he retained to purportedly enable him to continue engaging in unnecessary activity in this suit to support a counsel fee application.

7. The United States Court of Appeals in the *Ludwig* case held that the general rule is that a successful litigant is not permitted to recover his attorney's fees as damages or as reimbursable costs. However, in special circumstances a Court of equity does have the inherent power to reimburse a successful suitor for the costs of litigation including his attorney's fees. Special circumstances are found in situations where the possibility of recovering attorney's fees provide the sole stimulus

for the enforcement of a section of a statute such as Section 16(b). At the heart of the doctrine of awarding counsel fees in securities cases is the need to encourage the vigilance of private Attorneys General to provide corporate therapy protecting the public investor who might otherwise be victimized. Where a governmental agency charged with the responsibility presumably having the expertise to make the assessment required by statute and acting upon it, no special circumstances exist warranting the granting of a fee to a private Attorney General who voluntarily intervenes in the governmental action. Indeed, in such circumstances, to allow intervening counsel fees would not only be disruptive of agency procedures, but might very well discourage agencies from acting. Counsel for the Intervenor must be characterized as a mere volunteer who aided the public body or Trustee in the performance of their official duties but who is not entitled to compensation.

8. Furthermore, the equitable basis of granting counsel fees is that counsel by its action on behalf of plaintiff has prevented unjust enrichment; i.e., the plaintiff at his own expense has conferred a benefit upon

the defendant which justice demands he recompense. Here, as in *Ludwig*, where the corporate action has been rescinded or withdrawn as a result of the governmental agency's action, no benefit has been conferred upon the defendant for which he should recompense plaintiff's counsel. Additionally, the Ludwig Court held that attorney's fees may not be awarded on the theory that a party is forced to litigate by the unusual circumstances of the vexatious wanton conduct of the defendant where the governmental agency proceeding was prompted by statute, the extensive participation of plaintiff's counsel was voluntary and there is no reason to assume that the governmental agency would have failed to act without the voluntary intervention. Finally, where, as here, activity of counsel has produced no fund and has resulted in neither the establishment of a principle of law which necessarily established a recovery for those who allegedly benefited or at least contributed to general corporate therapeutics by disclosing a fraud that otherwise would have gone undetected, plaintiff's counsel is not entitled to attorney's fees.

9. This case is a classic example of what the Ludwig Court referred to as additional cooks who might not

only spoil the broth but paralyze the Chef. On March 20, 1972, prior to the commencement of this action, at which time trading of Southeastern's stock was suspended by the Attorney General to the completion of the Attorney General's proceeding, the public shareholders of Southeastern were at all times adequately protected by both the Attorney General's investigation and an agreement worked out between the Attorney General and Southeastern to freeze the proceeds of the public offering. As pointed out in the aforesaid affidavit of Mr. Burns at page 11, the Attorney General "confirmed the fact that plaintiff's maintenance of the Civil action had no effect upon the commencement of the investigation and proceeding by the Attorney General and the resolution of that proceeding through the tender offer." It is respectfully submitted that the foregoing overwhelmingly compels the conclusion that Monarch, the Underwriter in the rescinded offering, should in no way be liable to pay counsel fees to plaintiff's attorney in this action. Assuming, *arguendo*, that by some stretch of the imagination plaintiff's action contributed to the settlement between Southeastern and the Attorney General in the Attorney General's action, counsel fees should not be awarded to plaintiff's counsel

SUPPLEMENTAL AFFIDAVIT OF EDMUND PREISS, SWORN TO OCTOBER 4, 1973, IN SUPPORT OF CROSS-MOTION

because, as stated in the *Ludwig* case, counsel was a mere volunteer not entitled to compensation; no benefit resulted to the corporation as a result of the efforts made and no fund, out of which counsel fees might be paid, was created by counsel's voluntary actions.

WHEREFORE, it is respectfully requested that defendant, Monarch Funding Corp.'s cross-motion to dismiss this action against it be granted and that plaintiff's application for counsel fees as against said defendant be denied.

(Sworn to by Edmund Preiss, October 4, 1973.)

OPINION OF JUDGE KNAPP, DATED APRIL 4, 1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

STUART D. WECHSLER, on behalf of himself and all others similarly situated,

Plaintiff,

- against -

SOUTHEASTERN PROPERTIES, INC., et al.,

Defendants.

- -x

#40558

OPINION

72 Civ. 1813

FILED
APR 5 4 02 PM '74
U.S. DISTRICT COURT
S.D. OF N.Y.

APPEARANCES:

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APR 5 - 1974

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OPINION OF JUDGE KNAPP, DATED APRIL 4, 1974

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OPINION OF JUDGE KNAPP, DATED APRIL 4, 1974

KNAPP, D.J.

Motions to dismiss by the various defendants and applications for counsel fees and costs by plaintiff's attorney and by defendant Southeastern Properties, Inc. are pending. The case is dismissed, and counsel fees and costs are denied as to all parties.

The relevant facts are as follows: On March 17, 1972 defendant Southeastern Properties, Inc. first publicly offered its stock pursuant to a prospectus. Shortly thereafter the New York State Attorney General began investigating Southeastern. On May 2, 1972 this action was commenced as a class action on behalf of plaintiff and all persons who purchased any of the publicly offered 200,000 shares of common stock of defendant Southeastern from underwriters or dealers involved in the public offering, or in the open market thereafter, and who have either retained their stock or sold it at a loss. The complaint herein alleged two material misstatements or omissions: (1) the prospectus failed to disclose that Southeastern had failed to comply with the filing requirements of the States of New York and New Jersey as a result of which securities sold were not freely tradeable, and (2) the prospectus failed to disclose the pendency of negotiations between Southeastern and Apollo Industries, Inc. The complaint was later amended to add that the prospectus failed to disclose that the assets reflected in South-

eastern's financial statements were artifically inflated.

In late June plaintiff's attorney in this action, Edward Labaton, Esq., first learned of the Attorney General's investigation, and discussed it with Assistant Attorney General Thomas N. Dolan. In September, 1972 the Attorney General commenced a formal action against Southeastern in New York State Supreme Court. On November 21, 1972 this court directed that the plaintiff's motion under Rule 23 be held in abeyance until it could be determined whether the Attorney General's N w York Supreme Court action would be adequate to protect the interests of the plaintiff and the class he sought to represent. The Attorney General has now concluded his proceeding. I find it to have been adequate to the purpose stated, and dismiss this action.

In the Attorney General's Supreme Court action, the parties, on December 21, 1972, agreed to a consent injunction which directed Southeastern to offer to pay the public stockholders $5 per share, which was the amount they had paid for the stock, in order to make them whole. After Southeastern had liquidated several of its properties, the Continental Stock Transfer Company, transfer agent for Southeastern, on March 30, 1973, mailed a copy of the tender offer to each individual business or broker which was an owner of record of Southeastern shares on December 21, 1972.

OPINION OF JUDGE KNAPP, DATED APRIL 4, 1974

In an affidavit sworn to on July 12, 1973 and filed in this action, Arnold I. Burns, Esq., attorney for defendant Southeastern, stated:

> "I am pleased to report to this court that 193,500 shares out of the total of 200,000 of Southeastern held by the public were tendered pursuant to the March 30, 1973 offer. This represents a 96.75% response on the part of the shareholders to the offer. To the date of this affidavit, the company has disbursed to the shareholders a total of $804,250 and anticipates disbursing an additional $163,250 when the administration of the tender offer is concluded."

Assistant Attorney General Dolan has, on April 3, 1974, reported to me that Southeastern has complied with the essential provisions of its tender offer and that the Attorney General's action has basically been concluded. Southeastern has now disbursed approximately $904,000, and is holding an additional $63,750 subject to the resolution of certain legal problems. As to the approximately 3% of the stockholders who did not respond initially to the tender offer, the issue has been raised, at the hearing before me on July 31, 1973, as to whether such stockholders received adequate notice of the offer. The Attorney General has assured me that all reasonable steps were taken to contact all persons who might have an interest. Thus, in total, almost 97% of the tender offer has been accepted, and over 90% has been paid out. Further, the Attorney General has assured me that Southeastern has established to his

satisfaction its good-faith intention of complying completely with the terms of its tender offer to the full extent possible.

A word might be added with respect to the plaintiff's allegations that in various ways the Attorney General's action was less effective than this action. Plaintiff's counsel has argued that interest charges were not available in the Attorney General's action and there were other incidental benefits available in this action that were not available to the Attorney General. Such possibilities were thoroughly canvassed in recorded argument before me, and I find that, in total, they do not justify continuing this litigation. The case is dismissed.

APPLICATION FOR FEES AND COSTS

While both plaintiff's attorney and defendant Southeastern have applied to this court for attorneys' fees and costs, the only real issue before the court is whether such costs should be awarded to plaintiff's counsel. Defendant Southeastern has charged that plaintiff has unduly harassed it, but such argument appears invalid from the record before the court and thus provides no basis for awarding defendant costs.

As to plaintiff's application for counsel fees, I find the following to be the determinative facts:

(a) The Attorney General's investigation was instituted

prior to any action by plaintiff or his counsel and its initiation was in no way influenced by them.

(b) This action was initiated by plaintiff without knowledge - and independently of - the Attorney General's investigation.

(c) The Attorney General's action grew out of his own investigation and its initiation was in no way induced by any activity by plaintiff or his counsel.

(d) While the pendency of this action may have made the defendant Southeastern more amenable to settle with the Attorney General, I am not persuaded that plaintiff or his attorney was of any direct assistance to the Attorney General.

Upon those findings, I do not find that any award to plaintiff for counsel fees is warranted. Cf. Fleischmann Distilling Corp. v. Maier Brewing Co. (1967) 388 U.S. 714; Mills v. Electric Auto-Lite Co. (1970) 396 U.S. 375; Gilson v. Chock Full O'Nuts Corp. (2d Cir. 1964) 331 F.2d 107; Blau v. Rayette-Faberge, Inc. (2d Cir. 1968) 389 F.2d 469; Grace v. Ludwig (2d Cir. 1973) 484 F.2d 1262, cert. denied (April 1, 1974) _____U.S. _____; City of Detroit v. Grinnell Corporation (2d Cir. March 13, 1974) slip op. 2115.

SO ORDERED.

Dated: New York, New York
April 4, 1974.

WHITMAN KNAPP, U.S.D.J.

PLAINTIFF'S NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- - - - - -

SAME TITLE

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Notice is hereby given that plaintiff, Stuart D. Wechsler, hereby appeals to the United States Court of Appeals for the Second Circuit in the order entered in this action on April 4, 1974, dismissing the action and denying any award to plaintiff for counsel fees.

Dated: New York, N. Y.
April 25, 1974

TO:

Clerk
U. S. District Court
Southern District of New York

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By: s/ (Illegible)
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NOTICE OF CROSS-APPEAL OF DEFENDANT SOUTHEASTERN PROPERTIES, INC.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- - - - - -

SAME TITLE

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Notice is hereby given that defendant, Southeastern Properties, Inc., hereby cross-appeals to the United States Court of Appeals for the Second Circuit from so much of the order entered in this action on April 4, 1974 which denied said defendant's motion for an award of costs, including reasonable attorneys' fees, upon the dismissal of the action.

Dated: New York, New York
May 2, 1974

SCHWARTZ, BURNS, LESSER & JACOBY
By: s/ (Illegible)
A Member of the Firm
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To:

Clerk
United States District Court
Southern District of New York

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James Henry Henry McCord Forster & Richardson
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R. Popper for Schwartz Burn Lorser & Jacoby
Attorney for Southeastern Prop

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Harold D. Holtzer
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Attorney for Def. Appellant

By Lewis